

1-1-2011

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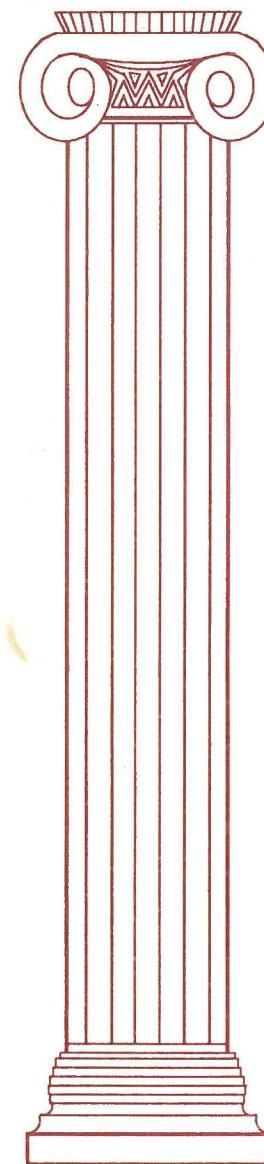
Recommended Citation

Debra Curtis, *Attorney Discipline Nationwide: A Comparative Analysis of Process and Statistics*, 35 *Journal of the Legal Profession* 209 (2011).

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Volume 35

Spring 2011

ATTORNEY DISCIPLINE NATIONWIDE: A COMPARATIVE ANALYSIS OF PROCESS AND STATISTICS

*Debra Moss Curtis*¹

ABSTRACT

This purpose of this article is to examine the process and statistics of attorney discipline nationwide and draw conclusions about information about them available to the public who may be hiring attorneys.

Attorney discipline systems are promulgated individually by states as part of each state's licensing and attorney regulation system. While the ABA has formulated model rules of professional conduct which most states have adopted, these rules serve as the conduct guidelines for attorney behavior. Each state ultimately decides what, within its licensing system, is a rule violation, to what procedure an attorney is entitled when accused of such, and if necessary, any penalties for violation of those rules under the stated procedures. Because many state supreme courts have used power to frequently delegate the enforcement process to State bar associations, organized lawyer associations have often had a voice in their own professional regulation. While states individually may publish discipline information, finding this information in one place to make comparisons among states and of lawyers licensed in multiple jurisdictions is difficult.

This article reviews, state by state, each state bar's rules of discipline and their discipline system. Along with an overview of each of those systems, this article also presents statistics regarding those disciplines during a 10-year period. Last, this article offers analysis and conclusions as to the problems and status of these competing systems.

1. Debra Moss Curtis is a Professor of Law at the Shepard Broad Law Center, Nova Southeastern University, Ft. Lauderdale, FL. She would like to thank the following current and former NSU Law students for their assistance on this project: significant contributions from Gema Polimeni, Omar Giraldo, Diana Callahan, Shannon Maribona, and Patrick Kennedy, and additional contributions from Brooke Guenot, Patyl Oflazian and Alyson Sincavage.

I. INTRODUCTION

This purpose of this article is to examine the process and statistics of attorney discipline nationwide and draw conclusions about information about them available to the public who may be hiring attorneys.

Attorney discipline systems are promulgated individually by states as part of each state's licensing and attorney regulation system.² While the ABA has formulated model rules of professional conduct which most states have adopted, these rules serve as the conduct guidelines for attorney behavior.³ Each state ultimately decides what, within its licensing system, is a rule violation, to what procedure an attorney is entitled when accused of such, and if necessary, any penalties for violation of those rules under the stated procedures. The power for states to impose discipline arises from the state supreme courts which have the ability to regulate their officers, which includes attorneys practicing before them.⁴ The Supreme Courts not only establish the rules that govern the practice of law, but also create and administer the process to enforce them.⁵

Because many state supreme courts have used power to frequently delegate the enforcement process to State bar associations, organized lawyer associations have often had a voice in their own professional regulation.⁶ While states individually may publish discipline information, finding this information in one place to make comparisons among states and of lawyers licensed in multiple jurisdictions is difficult.

The ABA maintains a National Lawyer Regulatory Data Bank, which is the only national repository of information regarding public disciplinary sanction imposed against U.S. lawyers.⁷ This data bank has existed for more than 40 years and is intended to provide the service to the attorney profession and the public of assisting in locating and examining records regarding public discipline.⁸ The Data Bank both allows for a name search and statistic check (for a small fee) and specialized statistical reports.⁹ However, states participation in this service is voluntary, so there is no guarantee that all actions taken are represented by this service.¹⁰ This service has been criti-

2. Lonnie T. Brown, Jr., *Ending Illegitimate Advocacy: Reinforcing Rule 11 Through Enhancement of the Ethical Duty to Report*, 62 OHIO ST. L.J. 1555, 1586 (2001).

3. *Id.* at 1586.

4. *Developments in the Law, Lawyers' Responsibilities and Lawyers Responses*, 107 HARV. L. REV. 1547, 1581 (1994).

5. *Id.* at 1581.

6. *Id.* at 1582. Debra Moss Curtis, *Licensing and Discipline of Fiscal Professionals in Florida: Attorneys, Accountants and Real Estate Professionals*, 29 NOVA L. REV. 339 (2005).

7. ABA Center for Professional Responsibility www.abanet.org/abanet/ (last viewed November 11, 2006).

8. *Id.*

9. *Id.*

10. *Id.*

cized as being under inclusive as only including attorneys actually disciplined, but not necessarily sanctioned.¹¹ One suggestion to correct this problem is to establish computerized "litigation misconduct databases" within each jurisdiction, accessible by a nationwide network to eliminate attorneys from changing jurisdictions to avoid discipline in one state.¹²

In 1997, it was noted that some Bars began noting the problems of uncertainty caused by inconsistent and conflicting professional standards among states, and suggested the solution be a creation of uniform national standards by the federal government.¹³ However, this suggestion has not been embraced.¹⁴

Attorneys who are admitted to practice in more than one state are still subject to the disciplinary procedures in every state in which they are a member of the Bar.¹⁵ Until the mid-to late 20th century, this multistate disciplinary reach was not considered important, due to few lawyers practicing in a multijurisdictional way, and standards not differing significantly from state to state.¹⁶ However, it is important to note that a lawyer admitted to practice is actually subject to discipline in any state where licensed, regardless of where the actual misconduct occurs.¹⁷ In addition, reciprocal discipline, or discipline by one state bar in response to an infraction in another state, is dealt with by the discipline rules themselves in each state, or court rules or statutes.¹⁸

Discipline systems are designed to proceed against individual lawyers, not law firms who may directly or vicariously breach ethics rules.¹⁹ Such reasoning stems from the discipline system's tie to licensing attorneys, which is only required for individuals, but not for groups of lawyers practicing together.²⁰ Some have argued, however, that it is time for discipline systems to reconsider their operation, given the way in which law practice is conducted in law firms, the "ethical infrastructure" in law firms and the reality that multiple lawyers in firms are not being disciplined even when

11. Brown, 62 OHIO ST. L.J. at 1607.

12. *Id.*

13. H. Geoffrey Moulton, Jr., *Federalism and Choice of Law in the Regulation of Legal Ethics*, 82 MINN. L. REV. 73, 76 (1997); See also Duncan T. O'Brien, *Multistate Practice and Conflicting Ethical Obligations*, 16 SETON HALL L. REV. 678, 720 (1986).

14. Moulton, 82 MINN. L. REV. at 77.

15. O'Brien, 16 SETON HALL L. REV. at 678.

16. *Id.*

17. *Id.* at 692.

18. *Id.* at 697. ABA Model Rule 8.5 states in part "(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct." www.abanet.org/cpr/mrpc/rule_8_5.html (last visited October 6, 2010).

19. Ted Schneyer, *Professional Discipline for Law Firms?* 77 CORNELL L. REV. 1, 3 (1992).

20. *Id.* at 3.

there is evidence linking them to actions, and that discipline systems work more infrequently against large firm lawyers.²¹

Generally, discipline systems consist of both formal, often public hearings with the threat of severe sanctions to address serious misconduct, as well as more informal confidential proceedings that may result in less severe remedies to address the less serious violations.²² In the past 20 years, there has been a growing trend to make more proceedings public.²³ Such a public turn of events may raise additional concerns in the process, such as attorneys' reputations being damaged, client information being necessarily revealed in the defense and delays in process due to case load.²⁴ However, others have documents that those states with open records indicate many of these fears unfounded, and seek to hold attorneys to the same level of protection as other civil defendants.²⁵

In part II of this article, I will review, state by state, each state bar's rules of discipline and their discipline system. Along with an overview of each of those systems, this article will present statistics regarding those disciplines during a 10-year period. Additionally, the amount of information available to the public about each discipline system is greatly varied, and such availability will be evaluated. In Part III, I will offer analysis of the issues that these differing discipline systems create, and offer conclusions.

II. STATE-BY-STATE ATTORNEY DISCIPLINE SYSTEMS

Information on each state's discipline system was gathered individually from each State Bar's website. It has been noted that while more states are slowly joining the trend of making information public, there is great disparity regarding the availability of discipline information.²⁶ Some sites contain disciplinary information, but other sites are confusing, not user-friendly and have information well hidden.²⁷ Information about attorney discipline often is not as "readily available" as that of doctors or other professions regulated by states.²⁸

ALABAMA

The Alabama State Bar's grievance system was established by the Supreme Court of Alabama to enforce uniform standards of professional con-

21. *Id.* at 9, 10.

22. 107 HARV. L. REV. at 1601.

23. 107 HARV. L. REV. at 1601, 1602.

24. *Id.*

25. *Id.* at 1602.

26. Vesna Jaksic, "Attorney Discipline Web Data Uneven" National Law Journal, September 10, 2007.

27. *Id.*

28. *Id.*

duct for lawyers.²⁹ The Alabama State Bar website has an easy to find brochure and complaint form on its main website for the public to access.³⁰ Once a complaint is filed with the Alabama State Bar it is reviewed by Bar counsel to determine if there is sufficient merit to warrant a full investigation.³¹ At this point, the Bar forwards a copy of the complaint to the attorney and gives them a chance to respond.³² Once the lawyer's response is received, the initial complaint and response will be reviewed again by Bar counsel to determine what further action, if any, should be taken, and written notification of the decision sent to the complainant.³³ If there is determined insufficient evidence to merit a formal investigation, then the matter is closed.³⁴ However, if there is sufficient information to establish that an ethics violation possibly occurred, a formal investigation will be opened.³⁵ Some investigations will be sent to local Bar grievance committees, and others will be investigated by the Bar.³⁶

The Alabama Rules of Professional Responsibility list the conduct that would warrant sanctioning of an attorney:

- 1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- 2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- 3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- 4) Engage in conduct that is prejudicial to the administration of justice;
- 5) State or imply an ability to influence improperly a government agency or official;
- 6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Canons of Judicial Ethics or other law; or

29. <http://www.alabar.org/> (last visited November 16, 2010).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. <http://www.alabar.org/> (last visited November 26, 2010).

36. *Id.*

7) Engage in any other conduct that adversely reflects on his fitness to practice law.³⁷

If any of the above rules are broken the Alabama Supreme Court through the State Bar can impose the following sanctions:³⁸

1) Probation: The lawyer will be monitored, may be required to report to a disciplinary authority, and his practice may be restricted during a specific period of time.

2) Private reprimand: A written reprimand, signed by the President of the Alabama State Bar is sent to the lawyer and placed in the lawyer's permanent file.

3) Public reprimand: There are two types. In both, the lawyer must appear before a public meeting of the Board of Bar Commissioners, where the reprimand will be read to him by the President of the Alabama State Bar. However, one type of public reprimand will be published in both the local newspaper where the lawyer practices and The Alabama Lawyer (a publication that is distributed to all members of the Alabama State Bar). The other type of public reprimand is published only in The Alabama Lawyer. These reprimands are also placed in the lawyer's permanent file.

4) Suspension: The lawyer is suspended from practicing law for a specific amount of time, ranging from 45 days to five years. Depending on the length of suspension, lawyers may be reinstated to practice law without a hearing. In some cases a lawyer may not resume the practice of law until reinstated after public notice and a hearing.

5) Disbarment: The lawyer is disbarred and disbarment is for a period of five years. The lawyer must petition the Bar for reinstatement in order to be allowed to resume the practice of law.³⁹

The Alabama Supreme Court has discretion in deciding what sanction to impose and the Court generally looks to the attorney's state of mind when the misconduct occurs.⁴⁰ Generally, the Court disbars an attorney when he knowingly or intentionally breaks the rules and the misconduct

37. *Id.*
38. *Id.*
39. *Id.*
40. <http://www.alabar.org/> (last visited November 16, 2010).

injures or potentially injures the client.⁴¹ The Court imposes a suspension when the attorney should have known he was acting improperly.⁴² An attorney is reprimanded publicly when the attorney acts negligently and causes injury or potential injury to the client.⁴³ Finally, the Supreme Court privately reprimands and attorney when he acts negligently but causes little or no injury to the client or the misconduct is an isolated incident.⁴⁴

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently extremely low. With the exception of one year, the percentage of actual disciplines imposed compared with number of charges filed has remained

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008 ⁴⁵
Active Lawyers	11423	11963	12943	13104	13692	14101	14840	14821	15301	14285	15814
Complaints Received	1551	1516	1596	1389	1653	1589	1514	1487	1489	1398	1408
Complaints Investigated ⁴⁶	663	636	344	326	389	274	348	301	244	233	232
Num. Formal Charges	40	51	54	68	87	50	63	46	38	28	46
Percentage of Formal Charges Compared with Complaints	3%	3%	3%	3%	3%	3%	3%	3%	3%	2%	3%
Total Number of Disciplines Imposed ⁴⁷	194	199	192	222	142	128	135	150	121	126	142
Percentage of Disciplines Imposed Compared to Complaints Recd	13%	13%	12%	16%	9%	8%	9%	10%	8%	9%	10%

41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. All tables compiled from the Survey on Lawyer Discipline Systems, published by the American Bar Association for each year, available at www.abanet.org/cpr/discipline/sold/home.html (last visited September 20, 2010). In any given year, some states provide no data while other states provide partial data. In addition, some states, as noted, have slightly different systems than the ABA data collection chart provides.
46. This number does not include complaints summarily dismissed for lack of jurisdiction. It may include complaints left over from the previous year and thus be larger than the number received. Systems www.abanet.org/cpr/discipline/sold/home.html (last visited September 20, 2010).
47. For all years, totals include private sanctions, public sanctions, involuntary disbarments, disbarments on consents, suspended, intermly suspended, censured and on probation. See ABA SOLD report, Chart II. Not all number of sanctions available for all years.

fairly constant, ranging from 8% to 13%.

ALASKA

All lawyers who are licensed to practice in Alaska are governed by ethical rules, known as the Rules of Professional Conduct, adopted by the Alaska Supreme Court.⁴⁸ The Alaska Bar Association administers these rules through an established 12 member Disciplinary Board consisting of three citizens and nine lawyers.⁴⁹ The Disciplinary Board appoints Bar Counsel who is assigned to independently investigate and prosecute allegations of lawyer misconduct.⁵⁰

If a person believes that a lawyer has acted unethically, he or she may make a written complaint to the Alaska Bar Association for investigation.⁵¹ The Bar Counsel staff will review the complaint to determine whether the documents contain enough factual allegations, which if true, would constitute ethical misconduct.⁵² If the grievance indicates that misconduct may have occurred, a copy of the grievance will be sent to the lawyer for a response.⁵³ After a full investigation, the Bar Counsel will either:

- dismiss the grievance if the evidence does not show unethical conduct;
- issue a written private admonition which is placed in the lawyer's record at the Bar Association;
- file a petition for a formal hearing, or enter a stipulation for discipline, either of which will be taken to the Disciplinary Board and/or the Alaska Supreme Court.⁵⁴

If the complaint is not accepted for investigation by Bar Counsel, the complainant may appeal that decision by writing a letter to the Bar Association with the reasons for disagreeing with the action.⁵⁵ The Board's Discipline Liaison will review the record in the complaint and decide on the appeal.⁵⁶

48. Grievances, https://www.alaskabar.org/servlet/content/lawyers_must_act_ethically_examples_of_misconduct.html

49. *Id.*

50. *Id.*

51. *Id.*

52. Process of Investigation, https://www.alaskabar.org/servlet/content/how_a_complaint_is_investigated.html

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

The Alaska Rules of Professional Responsibility list the conduct that would warrant sanctions:

- a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- d) state or imply an ability either to influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.
- f) conduct which results in conviction of a serious crime as defined in Rule 26(b);
- g) conduct which results in attorney or judicial discipline in any other jurisdiction, as provided in Rule 27;
- h) knowing misrepresentation of any facts or circumstances surrounding a grievance;
- i) failure to answer a grievance, failure to answer a formal petition for hearing, or failure to furnish information or respond to a request from the Board, Bar Counsel, an Area Division member, or a Hearing Committee in conforming with any of these Rules;
- j) contempt of the Board, of a Hearing Committee, or of any duly appointed substitute;
- k) engaging in the practice of law while on inactive status, or while disbarred or suspended from the practice of law for any reason;
- l) failure to perform or comply with any condition of discipline imposed pursuant to these Rules; or

m) failure to inform the Bar of his or her current mailing address and telephone number as provided in Rule 9(e).⁵⁷

A finding of misconduct by the Court or Board will be grounds for:

- 1) disbarment by the Court; or
- 2) suspension by the Court for a period not to exceed five years; or
- 3) probation imposed by the Court; or
- 4) public censure by the Court; or
- 5) reprimand in person by the Board, pursuant to Rule 10(c)(8); or
- 6) written private admonition by Bar Counsel, pursuant to Rule 11(a) (12).⁵⁸

When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

- 1) restitution to aggrieved persons or organizations;
- 2) reimbursement of the Lawyers' Fund for Client Protection; or
- 3) payment of the costs, including attorney's fees, of the proceedings or investigation or any parts thereof. In imposing costs and fees, consideration shall be given to the following factors:
 - a. the complexity of the disciplinary matter;
 - b. the duration of the case;
 - c. the reasonableness of the number of hours expended by Bar Counsel and the reasonableness of the costs incurred;
 - d. the reasonableness of the number of Bar Counsel used;

57. Misconduct, <http://www.courts.alaska.gov/prof.htm#8.4>; Grounds for discipline, <http://www.courts.alaska.gov/bar.htm#15>.

58. Types of Discipline, <http://www.courts.alaska.gov/bar.htm#16>.

- e. Bar Counsel's efforts to minimize fees;
- f. the reasonableness of the defenses raised by the Respondent;
- g. vexatious or bad faith conduct by the Respondent;
- h. the relationship between the amount of work performed by Bar Counsel and the significance of the matters at stake;
- i. the financial ability of the Respondent to pay attorney's fees; and
- j. the existence of other equitable factors deemed relevant.⁵⁹

There is no automatic formula for determining how aggravating and mitigating circumstances affect an otherwise appropriate sanction against a disciplined attorney; rather, each case presents different circumstances which must be weighed against the nature and gravity of the lawyer's misconduct.⁶⁰ There is a three-step analysis in imposing attorney sanctions: first, the Supreme Court addresses the first three prongs of the American Bar Association (ABA) Standards for imposing sanctions, determining the duty violated, the lawyer's mental state, and the extent of the actual or potential injury; second, the court looks to the ABA Standards to discern what sanction is recommended for the type of misconduct found; and third, after determining the recommended sanction, the court decides whether aggravating or mitigating factors should affect that sanction.⁶¹

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. With the exception of one year the percentage of formal charges compared with complaints filed has also been extremely low. However, overall, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 3% to 9%.

59. *Id.*

60. *In re Hanlon*, 110 P.3d 937, 942 (Alaska 2005).

61. *In re Disciplinary Matter Involving Ford*, 128 P.3d 178, 182 (Alaska 2006).

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	2643	2668	2715	2692	2690	2694	2753	2781	2879	2913	2985
Complaints Received	282	207	241	244	234	214	177	232	190	264	253
Complaints Investigated	35	35	42	68	24	47	51	38	46	31	39
Num. Formal Charges	2	5	10	10	3	5	8	14	11	28	8
Percentage of Formal Charges Compared with Complaints	<1%	2%	4%	5%	1%	2%	5%	6%	6%	11%	3%
Total Number of Disciplines Imposed	9	15	16	20	6	11	13	20	14	11	16
Percentage of Disciplines Imposed Compared to Complaints Recd	3%	7%	7%	8%	3%	5%	7%	9%	7%	4%	6%

ARIZONA

The Supreme Court of Arizona, through the State Bar of Arizona and its Regulation Department, regulates lawyer conduct in the state.⁶² The Lawyer Regulation Department has developed the Attorney/Consumer Assistance Program (A/CAP) to help those who have a dispute with an attorney.⁶³ A/CAP acts as a central intake office for all inquiries concerning the conduct of attorneys in Arizona.⁶⁴

If a complainant files charges against a lawyer, State Bar counsel will review it to determine whether an investigation is appropriate.⁶⁵ If an investigation is appropriate, a copy of what the complainant submitted will be sent to the lawyer, who will be asked to submit a written response to the charges.⁶⁶ If the complainant's information does not meet the threshold for an investigation, they will be notified of that fact.⁶⁷

If, after investigation, the State Bar determines that there is clear and convincing evidence to show an ethics rule violation, formal disciplinary charges may be filed against the lawyer.⁶⁸ Under those circumstances, a hearing may be held.⁶⁹ If the Commission recommends censure, suspension or disbarment, the parties may ask the Supreme Court of Arizona to review the matter.⁷⁰ In suspension and disbarment cases, if the parties do

62. Lawyer Discipline Process, <http://www.azbar.org/WorkingWithLawyers/discproc.cfm>.
 63. A/CAP, <http://www.azbar.org/WorkingWithLawyers/ACAP.cfm>.
 64. *Id.*

65. Lawyer Discipline Process, <http://www.azbar.org/WorkingWithLawyers/discproc.cfm>.
 66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Arizona Supreme Court, <http://www.azbar.org/WorkingWithLawyers/discproc.cfm>.

not ask for review, the Court may choose to review the matter anyway.⁷¹ If the Court does not decide to review the matter within 60 days, it becomes final and the Supreme Court Clerk enters an order and judgment.⁷² All censures, suspensions and disbarments happen by Supreme Court order.⁷³ The State Bar has a Mediation program as part of the disciplinary process.⁷⁴ If the alleged misconduct is relatively minor, and it appears that the parties could benefit from getting together and discussing their concerns with a trained mediator, the matter may be referred to one of the lawyer or non-lawyer mediators throughout the state.⁷⁵

Charges are handled in several ways:

1. Charges may be dismissed if the lawyer's conduct does not violate the Rules of Professional Conduct contained within Rule 42 of the Rules of the Supreme Court of Arizona.
2. Charges may be referred to the Peer Review Program when the lawyer has not violated the Rules of Professional Conduct but has shown incivility or unprofessionalism toward clients or others.
3. Low-level violations or client relation problems may be resolved by the Attorney/Consumer Assistance Program.
4. If the charges against a lawyer are found to violate the Rules of Professional Conduct, the lawyer may be referred to a diversion program, required to pay restitution, issued an informal reprimand or censure, ordered to pay costs, placed on disability inactive status, suspended or disbarred.⁷⁶

The State Bar has established diversion programs that concentrate on helping the lawyer change his or her practices.⁷⁷ Diversion is not an alternative to discipline in cases of serious misconduct or which factually present little hope that diversion will achieve program goals.⁷⁸ Successful completion of diversion results in the underlying matter being dismissed.⁷⁹

The Arizona Supreme Court considers the following factors in determining appropriate sanctions: (1) the duty violated, (2) the lawyer's men-

71. *Id.*

72. *Id.*

73. *Id.*

74. Alternatives to Discipline, <http://www.azbar.org/WorkingWithLawyers/discproc.cfm>.

75. *Id.*

76. Charges, <http://www.azbar.org/WorkingWithLawyers/discproc.cfm>.

77. Diversion, <http://www.azbar.org/WorkingWithLawyers/discproc.cfm>.

78. Typically only if sanction is less than suspension. Diversion, <http://www.azbar.org/WorkingWithLawyers/discproc.cfm>.

79. *Id.*

tal state, (3) the potential or actual injury caused by the lawyer's conduct, and (4) the existence of aggravating or mitigating factors.⁸⁰ The Court also will consider similar cases to assess what sanctions are proportionate to the improper conduct.⁸¹

The percentage of formal charges as compared with the active attorney population has only varied between less than 1% and 2%. The percentage of formal charges compared with complaints filed in earlier years was higher but in recent years has remained extremely low. However, the percentage of disciplines imposed compared to complaints received has varied, from a low of 5% in fairly recent years to the following year a high of 14%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	11573	11810	12469	12985	n/a	12930	14197	13610	14079	16038	16418
Complaints Received	2567	2404	2524	2442	n/a	2306	4714	4940	2076	3914 ⁸²	4324
Complaints Investigated	1130	1127	1182	1288	n/a	1718	1697	2070	1711	1797	1615
Num. Formal Charges	211	262	148	80	n/a	64	73	75	59	101	85
Percentage of Formal Charges Compared with Complaints	8%	11%	6%	3%	n/a	3%	2%	2%	3%	3%	2%
Total Number of Disciplines Imposed	332	214	243	281	n/a	400	259	269	296	265	356
Percentage of Disciplines Imposed Compared to Complaints Recd	13%	9%	10%	12%	n/a	17%	5%	5%	14%	7%	8%

ARKANSAS⁸³

The Committee on Professional Conduct has the authority to discipline attorneys for violation of the Arkansas Rules of Professional Conduct adopted by the Supreme Court.⁸⁴ If a complainant believes that an attorney has acted in a manner that violates the standards of professional conduct, they must fill out the grievance form and return it to the office of Profes-

80. See American Bar Association Standards for Imposing Lawyer Discipline 3.0 (1992) ("ABA Standards"); *In re White-Steiner*, 198 P.3d 1195, 1197 (Arizona 2009).

81. *In re White-Steiner*, 198 P.3d 1195, 1197 (Ariz. 2009).

82. Includes matters handled by consumer assistance program.

83. In Arkansas and Georgia, the number of formal charges means the number of cases filed, not lawyers filed against.

84. Grievance Form, Supreme Court of Arkansas, Office of Professional Conduct, [http://courts.arkansas.gov/professional_conduct/1-G-Form\(2\).pdf](http://courts.arkansas.gov/professional_conduct/1-G-Form(2).pdf).

sional Conduct.⁸⁵ Photocopies of any documents, letters, agreements, or other papers that are relevant and material to the complaint must be included.⁸⁶

The Committee on Professional Conduct will review the information in the complaint form, conduct any necessary investigation and advise the complainant whether their concerns fall within the Committee's limited authority.⁸⁷ If a formal complaint is warranted, the Committee will assist the complainant in the preparation of an affidavit of complaint.⁸⁸ The formal complaint and a copy of the affidavit will be sent to the attorney, who may submit a response.⁸⁹ The complainant will get a copy of any response and have the opportunity for rebuttal.⁹⁰ In some instances, the Committee may conduct a public hearing on a complaint.⁹¹

The Committee must decide if the attorney's action was serious misconduct or a lesser misconduct.⁹² Serious misconduct would warrant a sanction that terminates or restricts the attorney's license to practice law.⁹³ The committee will find serious misconduct if:

- 1) The misconduct involves the misappropriation of funds;
- 2) The misconduct results in or is likely to result in substantial prejudice to a client or other person;
- 3) The misconduct involves dishonesty, deceit, fraud, or misrepresentation by the lawyer;
- 4) The misconduct is part of a pattern of similar misconduct;
- 5) The lawyer's prior record of public sanctions demonstrates a substantial disregard of the lawyer's professional duties and responsibilities; or the misconduct constitutes a "Serious Crime."⁹⁴

Lesser misconduct is conduct in violation of the Model Rules that would not warrant a sanction terminating or restricting the lawyer's license to practice law.⁹⁵

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. Grievance Form, Supreme Court of Arkansas, Office of Professional Conduct, [http://courts.arkansas.gov/professional_conduct/1-G-Form\(2\).pdf](http://courts.arkansas.gov/professional_conduct/1-G-Form(2).pdf).

91. *Id.*

92. Procedures of the Ark. Supreme Court Regulating Prof'l Conduct of Attorneys at Law § 17; *Id.*

93. *Id.*

94. *Id.*

The most serious sanction of disbarment is only applied when there is a serious misconduct violation and the committee feels any lesser sanction would be inappropriate.⁹⁶ The committee will suspend an attorney's practice for a period of no more than five years if his acts consist of serious misconduct but do not warrant disbarment.⁹⁷

The Sanctions used by the committees for infractions of lesser misconduct are probation, issuing a letter of warning, issuing a letter of caution, and issuing a letter of reprimand.⁹⁸ To determine the appropriate sanction for lesser misconduct the committee looks to a set of factors:

- 1) The nature and degree of the misconduct for which the lawyer is being sanctioned;
- 2) The seriousness and circumstances surrounding the misconduct;
- 3) The loss or damage to clients;
- 4) The damage to the profession;
- 5) The assurance that those who seek legal services in the future will be protected from the type of misconduct found;
- 6) The profit to the lawyer;
- 7) The avoidance of repetition;
- 8) Whether the misconduct was deliberate, intentional or negligent;
- 9) The deterrent effect on others;
- 10) The maintenance of respect for the legal profession;
- 11) The conduct of the lawyer during the course of the Committee action;
- 12) The lawyer's prior disciplinary record, to include warnings;

95. *Id.*
96. *Id.*
97. *Id.*
98. Procedures of the Ark. Supreme Court Regulating Prof'l Conduct of Attorneys at Law § 17;
Id.

13) Matters offered by the lawyer in mitigation or extenuation except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the lawyer demonstrates that he or she is successfully pursuing in good faith a program of recovery.⁹⁹

Probation is used only in cases where there is little likelihood that the lawyer will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised.¹⁰⁰ A letter of warning is used in cases of "lesser misconduct" of a minor nature, when there is little or no injury to a client, the public, the legal system or the profession, and when there is little likelihood of repetition by the lawyer, should a warning be imposed.¹⁰¹ A letter of caution is issued when sufficient factors are present that makes a lesser sanction inappropriate.¹⁰² Finally, a letter of reprimand is issued when the factors that are present make a lesser sanction inappropriate; however, the attorney's actions do not rise to the level of serious misconduct.¹⁰³

The percentage of formal charges as compared with the active attorney population has remained at about 2%. The percentage of formal charges compared with complaints filed has also been consistently quite high compared with other states. In addition, the percentage of actual disciplines imposed compared with number of charges filed is also consistently quite

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	n/a	n/a	6500	6500	8300	8500	8500	8600	7987	8500	8500
Complaints Received	n/a	n/a	802	872	1186	1082	1070	942	866	819	859
Complaints Investigated	n/a	n/a	1045	697	700	700	800	976	804	924	1227
Num. Formal Charges	n/a	n/a	132	121	149	181	128	148	156	140	114
Percentage of Formal Charges Compared with Complaints	n/a	n/a	16%	14%	13%	17%	12%	16%	18%	17%	13%
Total Number of Disciplines Imposed	n/a	n/a	209	204	210	261	252	246	202	195	147
Percentage of Disciplines Imposed Compared to Complaints Recd	n/a	n/a	26%	23%	18%	24%	24%	26%	23%	24%	17%

high compared with other states, many years remaining at about one in four complaints resulting in discipline.

99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*

CALIFORNIA

As an arm of the California Supreme Court, the State Bar investigates and prosecutes complaints against lawyers.¹⁰⁴ The State Bar Court conducts hearings and makes decisions and formal recommendations on disciplinary matters.¹⁰⁵ The court is divided into two departments — a Hearing Department and a Review Department, each headed by a presiding judge.¹⁰⁶ California is the only state in the nation with independent professional judges dedicated to ruling on attorney discipline cases.¹⁰⁷

Any complaint received is entered into the system and a State Bar lawyer will read it to determine how the complaint will proceed.¹⁰⁸ The complaint will then be assigned to a staff member to conduct an investigation.¹⁰⁹ At the end of the investigation, the complainant is informed in writing if the complaint will proceed to prosecution in the State Bar Court or if it will be closed.¹¹⁰ If the State Bar determines that an attorney's actions involve probable misconduct, formal charges are filed with the State Bar Court by the bar's prosecutors (Office of Chief Trial Counsel).¹¹¹ The independent State Bar Court hears the charges and has the power to recommend that the California Supreme Court suspend or disbar attorneys found to have committed acts of professional misconduct or convicted of serious crimes.¹¹² For lesser offenses, public or private reprimands may be issued by the State Bar Court.¹¹³ The Court may also temporarily remove lawyers from the practice of law when they are deemed to pose a substantial threat of harm to clients or the public.¹¹⁴ Lawyers may seek review of State Bar Court decisions in the California Supreme Court.¹¹⁵

Disciplinary action for violations of the Rules of Professional Conduct or the State Bar Act ranges from private reprimand to disbarment.¹¹⁶ If a State Bar investigation indicates that an attorney's conduct only bordered on a violation or was a minor breach, Bar prosecutors may choose an alternative to discipline, such as a Directional or Warning Letter to the at-

104. Filing A Complaint, <http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FilingaComplaint.aspx>.

105. General Information, <http://www.statebarcourt.ca.gov/Home.aspx>.

106. *Id.*

107. *Id.*

108. Filing A Complaint, <http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FilingaComplaint.aspx>.

109. *Id.*

110. *Id.*

111. General Information, <http://www.statebarcourt.ca.gov/Home.aspx>.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. FAQ, <http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FAQ.aspx>.

torney - and close the case.¹¹⁷ Alternatively, they could issue an Admonition informing the attorney that no further action will take place as long as he or she stays out of trouble for two years. Additionally there could be an Agreement in Lieu of Discipline that requires the attorney to fulfill specially tailored remedial conditions.¹¹⁸

For attorneys who are disbarred, their actions generally fall into one of two categories - either they committed a very serious violation, or they have a history of misconduct.¹¹⁹ Most disbarment cases involve more than one violation.¹²⁰ By contrast, reprimand, either public or private, usually is reserved for first-time offenders whose misconduct falls on the low end of the scale.¹²¹

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. With the exception of one year, the percentage of formal charges compared with complaints filed has also been consistently extremely low. By contrast, the percentage of actual disciplines imposed compared with number of charges filed has varied greatly, from a low of 5% to a high of 18%. As California has such a large number of attorney admitted, there thus have been years with large numbers of disciplines imposed in the state.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

In 1999, the Legislature enacted a bill that required the State Bar to compile statistics relating the correlation of complaints received and disci-

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	133927	135897	138751	137326	142913	145713	149440	151975	157546	161437	165,474
Complaints Received	8040	8405	10846	11138	11784	13522	14168	15817	15494	16684 ¹²²	16165
Complaints Investigated	n/a	n/a	14136	15422	16473	5277	5843	5106	4884	4889	4966
Num. Formal Charges	350	278	604	446	1086	547	622	429	458	385	430
Percentage of Formal Charges Compared with Complaints	4%	3%	6%	4%	9%	4%	4%	3%	3%	2%	3%
Total Number of Disciplines Imposed	1441	589	1555	1791	1296	1447	1267	1179	1116	852	911
Percentage of Disciplines Imposed Compared to Complaints Recd	18%	7%	14%	16%	11%	11%	9%	7%	7%	5%	6%

plinary action taken with the size of a law firm.¹²³ The Stat Bar found that while there was no institutional bias against solo or small firm attorneys, there was a disproportionate number of complaints filed against solo and small firm practitioners as compared to large firm attorneys.¹²⁴

COLORADO

The Colorado Supreme Court has established standards of ethics for attorneys in the Court rules and the Colorado Rules of Professional Conduct.¹²⁵ To administer the procedures, the Colorado Supreme Court has appointed an Office of Attorney Regulation Counsel; a nine-member At-

122. California includes matters handled by central intake.

123. Report by the State Bar of California "Investigation and Prosecution of Disciplinary Complaints Against Attorneys in Solo Practice, Small Size Law Firms and Large Size Law Firms" (June 2001).

124. *Id.*

125. Regulation, <http://www.coloradosupremecourt.com/Regulation/Regulation.asp>.

torney Regulation Committee, composed of both attorneys and lay persons; and an Office of the Presiding Disciplinary Judge.

Complaints are received by Central Intake, where they are then assigned to a lawyer for an initial investigation.¹²⁶ The Central Intake lawyer decides to dismiss the complaint, recommend diversion (mediation, fee arbitration, practice monitoring, ethics school, or other CLE courses), or gives the complaint to a trial lawyer to conduct further investigation.¹²⁷ After further investigation, the complaint is either dismissed or given to the Attorney Regulation Committee.¹²⁸ The Committee again has the opportunity to dismiss the complaint, recommend diversion, privately admonish, or authorize formal proceedings.¹²⁹ There is a hearing before the Presiding Disciplinary judge and two Hearing Panel members.¹³⁰ Again, the complaint can be dismissed or the Board can issue a public censure, suspension, or disbarment of the attorney.¹³¹ The attorney may appeal decisions of the Board to the Supreme Court of Colorado.¹³²

In Colorado, it is professional misconduct for a lawyer to:

- a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- d) engage in conduct that is prejudicial to the administration of justice;
- e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

126. Process, <http://www.coloradosupremecourt.com/Regulation/Process.htm>.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. Process, <http://www.coloradosupremecourt.com/Regulation/Process.htm>.

g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process; or

h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law.¹³³

In cases involving minor misconduct, an attorney may be admonished, censured, or placed in a diversion program.¹³⁴ In serious matters, attorneys face suspension of their license to practice law or disbarment.¹³⁵ The Presiding Disciplinary Judge and the Colorado Supreme Court often reference the ABA Standards for Imposing Lawyer Sanctions in determining the appropriate sanctions in an attorney disciplinary matter, but these standards are not binding on the Judge or the Supreme Court.¹³⁶

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed in all but the most distant year has also been consistently extremely low. Similarly, with the exception of the earliest year reported, the percentage of actual disciplines imposed compared with number of charges filed has remained consistently low.

133. Misconduct, <http://www.cobar.org/index.cfm/ID/20519/subID/22571/CETH//>.
134. Regulation, <http://www.coloradosupremecourt.com/Regulation/Regulation.asp>.
135. *Id.*
136. Rules, <http://www.coloradosupremecourt.com/Regulation/Rules.htm>.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	18000	19000	19593	19938	20132	20647	20839	21320	21842	21900	22961
Complaints Received	1472	4961	4507	4550	5186	4521	4270	3929	4570	4016	4119
Complaints Investigated	479	485	432	433	602	602	572	353	402	372	361
Num. Formal Charges	129	128	60	70	58	61	49	54	76	52	55
Percentage of Formal Charges Compared with Complaints	9%	2%	1%	1%	1%	1%	1%	1%	2%	1%	1%
Total Number of Disciplines Imposed	205	267	140	178	161	208	194	166	208	175	188
Percentage of Disciplines Imposed Compared to Complaints Recd	14%	5%	3%	4%	3%	5%	5%	4%	5%	4%	5%

CONNECTICUT

The Statewide Grievance Committee is a body of twenty-one individuals, comprised of fourteen attorneys and seven non-attorneys, appointed by the judges of the Superior Court to review, investigate and adjudicate attorney ethics matters.¹³⁷ The Statewide Bar Counsel reviews any complaint received and either forwards it directly to a grievance panel for an investigation or if it meets the criteria for dismissal of a complaint, refers it to two members of the Statewide Grievance Committee.¹³⁸ If the complaint is referred to the Committee, they then will either dismiss it or forward it on to a grievance panel for an investigation.¹³⁹ If the complaint is forwarded to a grievance panel, the Statewide Bar Counsel will notify the attorney of the complaint and advise the attorney that a response is required.¹⁴⁰ The grievance panel will investigate the complaint and it may hold a hearing as part of its investigation.¹⁴¹ If the grievance panel determines that probable cause does not exist, it will dismiss the complaint without further unless the complaint alleges that the attorney committed a crime, in which case it may be reviewed by a reviewing committee.¹⁴² If the grievance panel determines that probable cause of misconduct does exist, the Statewide

137. SGC, <http://www.jud.ct.gov/SGC/>.
138. Grievance Procedures, <http://www.jud.ct.gov/Publications/gc008.pdf>.
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.*

Grievance Committee or a reviewing committee will conduct a hearing that is open to the public.¹⁴³

It is professional misconduct for a lawyer to:

(1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law¹⁴⁴

After the hearing, the Statewide Grievance Committee or a reviewing committee may decide to dismiss the complaint, to impose sanctions and conditions against the attorney, or to direct that the attorney be brought before the Superior Court for reprimand, suspension or disbarment in a proceeding known as a presentment.¹⁴⁵

The percentage of formal charges as compared with the active attorney population has remained at less than 1% or at 1%. The percentage of formal charges compared with complaints filed has varied greatly, from a low of about 8% up to a high in the most recent year reported of 38%. While the percentage of actual disciplines imposed compared with number of charges filed has remained more constant, it has ranged from a low of 12% to a high of 21%.

143. *Id.*
144. Misconduct 8.4, http://www.jud.ct.gov/Publications/PracticeBook/PB_2010.pdf#page=9.
145. Grievance Procedures, <http://www.jud.ct.gov/Publications/gc008.pdf>.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	27001	27693	29080	29913	31277	31560	31402	33700	34564	35387	36248
Complaints Received	1100	1199	1174	1107	1188	1358	1311	1194	1173	1263	1232
Complaints Investigated	928	917	930	1114	880	989	1089	1061	1052	1110	1032
Num. Formal Charges	251	262	229	194	94	n/a	100	255	111	163	469
Percentage of Formal Charges Compared with Complaints	23%	22%	19%	18%	8%	n/a	8%	21%	9%	13%	38%
Total Number of Disciplines Imposed	146	164	204	180	173	168	190	249	193	202	165
Percentage of Disciplines Imposed Compared to Complaints Recd	13%	14%	17%	16%	15%	12%	14%	21%	16%	16%	13%

DELAWARE

The Supreme Court of Delaware appoints the members of the Board of Professional Responsibility, the Preliminary Review Committee (PRC), and the Office of Disciplinary Counsel (ODC).¹⁴⁶ The Board of Professional Responsibility adopts guidelines for the conduct of hearings and periodically reviews the operation of the disciplinary system.¹⁴⁷ The ODC is an arm of the Supreme Court of Delaware, which assists the court in regulating the practice of law.¹⁴⁸ All complaints regarding a Delaware lawyer's conduct is directed to the ODC, thus making it responsible for evaluating, investigating, and, if warranted, prosecuting lawyer misconduct.¹⁴⁹ Lawyers are obligated to conform their conduct to the Delaware Lawyers' Rules of Professional Conduct.¹⁵⁰

According to the Rules of Disciplinary Procedure, it is professional misconduct for a lawyer to violate or attempt to violate the rules; commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; engage in conduct that is prejudicial to the administration of justice; or to knowingly assist a judge

146. The Delaware Lawyer's Rules of Disciplinary Procedure, *available at* <http://courts.delaware.gov>.
147. Office of Disciplinary Counsel of the Supreme Court of Delaware, *available at* <http://courts.delaware.gov/odc/index.htm>.
148. *Id.*
149. *Id.*
150. *Id.*

or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.¹⁵¹ Misconduct is be grounds for one of the following sanctions: disbarment by the court; suspension by the court not in excess of three years; immediate interim suspension; public probation; public reprimand; private admonition; private probation; conditional diversion; or court-ordered restitution.¹⁵² According to the Rules, mitigating or aggravating circumstances that affect the nature or degree of discipline must be fully set forth by the Board to the Court.¹⁵³

The percentage of formal charges as compared with the active attorney population has varied from to less than 1% to 2%. The percentage of formal charges compared with complaints filed has between the most recent year at 4% while a high in the first year reported of 12%. The percentage of actual disciplines imposed compared with number of charges filed has also fluctuated, from 5% to 15%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	2067	2154	2238	2238	2868	2987	3107	2668	3311	3435	2957
Complaints Received	416	362	426	438	413	504	507	455	441	354	297
Complaints Investigated	383	307	446	434	315	342	337	410	401	338	212
Num. Formal Charges	52	24	21	29	34	40	45	21	18	32	14
Percentage of Formal Charges Compared with Complaints	12%	7%	5%	7%	5%	8%	9%	5%	9%	5%	4%
Total Number of Disciplines Imposed	33	32	38	49	61	40	32	41	24	36	22
Percentage of Disciplines Imposed Compared to Complaints Recd	8%	9%	9%	11%	15%	8%	6%	9%	5%	10%	7%

FLORIDA

The Florida Bar was created by the Supreme Court of Florida "to enforce the ethical standards" of the state's lawyers, thus acting as the state's official agency.¹⁵⁴ No formal complaint will be filed by The Florida Bar in disciplinary proceedings against a member of the bar unless it has been determined that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action.¹⁵⁵ The Supreme Court

151. *Id.*

152. *Id.*

153. Office of Disciplinary Counsel of the Supreme Court of Delaware, available at <http://courts.delaware.gov/odc/index.htm>.

154. The Florida Bar, Consumer Pamphlet, available at <http://www.floridabar.org>.

155. Rules Regulating the Florida Bar, available at <http://www.floridabar.org>.

of Florida has designated the Board of Governors, grievance committees, and referees to assist in the discipline of attorneys in the state, all of which "have jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or cause...."¹⁵⁶

According to the Rules Regulating the Florida Bar, there must be at least one grievance committee for each judicial circuit and they have the power to proceed in all matters properly before them.¹⁵⁷ The Board may also appoint "special" grievance committees for the purpose of specific investigations.¹⁵⁸

If a grievance committee finds probable cause to believe that misconduct has occurred or if an accused attorney rejects a grievance committee's recommendation for an admonishment, the matter goes to trial before a referee (a trial judge).¹⁵⁹ After the trial, the referee prepares a report which includes the finding of fact, and recommendations to the Supreme Court as to whether the respondent should be found guilty of misconduct, and disciplinary recommendations.¹⁶⁰

The possible sanctions for the violation of the Rules Regulating the Florida Bar are disbarment, suspension, emergency suspension, public reprimand, admonishment, and probation.¹⁶¹ After a finding of misconduct, a court should consider the following factors when determining an appropriate standard: the duty violated; the lawyer's mental state; the potential or actual injury caused by the lawyer's misconduct; and the existence of aggravating or mitigating factors.¹⁶²

The percentage of formal charges as compared with the active attorney population has varied from less than 1% to 1%. The percentage of formal charges compared with complaints filed has been reported until recently in Florida. With the exception of one year, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from that low of 4% to 15%.

156. *Id.*

157. *Id.*

158. *Id.*

159. Reporter's Handbook, available at <http://www.floridabar.org>.

160. *Id.*

161. Florida Standards for Imposing Lawyer Sanctions, available at <http://www.floridabar.org>.

162. *Id.*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	58108	59741	62722	63452	62999	65894	67551	77102	72695	68589	87010
Complaints Received	9317	9101	9280	8650	8691	8671	8820	8451	9063	7827 ¹⁶³	9788
Complaints Investigated	10409	10471	12780	10933	12191	9144	10939	10752	10470	7296	6449
Num. Formal Charges	n/a	n/a	n/a	n/a	359	n/a	n/a	n/a	557	73	152
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	n/a	4%	n/a	n/a	n/a	6%	<1%	2%
Total Number of Disciplines Imposed	1432	1210	811	774	771	767	328	724	782	872	n/a
Percentage of Disciplines Imposed Compared to Complaints Recd	15%	13%	9%	7%	6%	9%	4%	9%	9%	11%	n/a

GEORGIA

The State Bar of Georgia has vested the power to investigate and discipline attorneys in a State Disciplinary Board and a Consumer Assistance Program.¹⁶⁴ The State Disciplinary Board consists of two panels: the Investigative Panel, which conducts investigations to determine whether or not probable cause exists, and the Review Panel who recommends the level of discipline to the Georgia Supreme Court.¹⁶⁵ The Supreme Court of Georgia has the authority to impose a sanction upon a member of the Georgia Bar.¹⁶⁶

The Consumer Assistance Program (C.A.P.) was implemented to help people of the state with questions and problems regarding Georgia lawyers.¹⁶⁷ The C.A.P. is a "sort of clearinghouse" for citizens with problems regarding Georgia lawyers.¹⁶⁸ It believes that a grievance form should be sent out only when "serious unethical conduct" is involved.¹⁶⁹ For any other type of alleged misconduct, the C.A.P. believes that the most effective way to resolve it is to call the lawyer or suggest alternative ways to resolve the dispute.¹⁷⁰

The Office of General Counsel is the first place a grievance lands and an initial screening and review is conducted.¹⁷¹ It is the General Counsel's obli-

163. Excludes matters handled by central assistance program in both Florida and Georgia.
164. The State Bar of Georgia, available at www.gabar.org/handbook/.
165. *Id.*
166. *Id.*
167. The State Bar of Georgia, available at www.gabar.org/public_information.
168. *Id.*
169. *Id.*
170. *Id.*
171. The State Bar of Georgia, available at www.gabar.org/handbook/.

gation to determine whether the grievance states facts and assertions sufficient to allege the violation of one or more of the Standards of Conduct.¹⁷²

Any violation of the Rules of Professional Conduct leads to one of the following sanctions: disbarment, suspension, public reprimand, and formal admonition.¹⁷³ Disbarment would be appropriate in cases "of serious misconduct."¹⁷⁴ According to Comment 3 of Rule 8.4 (Misconduct), "although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category."¹⁷⁵

A violation of that type will result in disbarment, including engaging in conduct involving moral turpitude; engaging in professional conduct involving dishonesty, fraud, deceit, or willful misrepresentation; making a false, fraudulent, deceptive, or misleading communication about the lawyer or his services among other serious offenses. By contrast, a public reprimand will be administered for less egregious behavior.

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has stayed relatively low, ranging from 2% to 9%. In addition, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 6% to 11%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	23375	24085	25358	23160	26270	34561	28119	28689	30301	31528	31621
Complaints Received ¹⁷⁶	1971	2093	2076	2316	2490	2712	2472	2500	2719	2794	2453
Complaints Investigated	566	619	479	452	393	261	306	356	384	356	340
Num. Formal Charges	83	86	95	112	100	170	43	123	252	193	170
Percentage of Formal Charges Compared with Complaints	4%	4%	5%	5%	4%	6%	2%	5%	9%	7%	7%
Total Number of Disciplines Imposed	208	205	164	180	158	181	166	192	156	178	211
Percentage of Disciplines Imposed Compared to Complaints Recd	11%	10%	8%	8%	6%	7%	7%	8%	6%	6%	9%

172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.*
176. In Georgia, the complaints received does not include inquiries received by the consumer assistance program. Systems www.abanet.org/cpr/discipline/sold/home.html (last visited May 20, 2008).

HAWAII

The Supreme Court of Hawaii has appointed the Disciplinary Board of the Hawaii Supreme Court to "consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention."¹⁷⁷

The Office of Disciplinary Counsel investigates all matters involving alleged misconduct called to the counsel's attention and prosecutes all disciplinary proceedings before the hearing committees, the Board, and the Supreme Court.¹⁷⁸ Upon the conclusion of an investigation, Counsel recommends either dismissal of the complaint, informal admonition of the attorney censored, the institution of non-disciplinary proceedings for minor misconduct,¹⁷⁹ or the institution of formal disciplinary proceedings before a hearing committee or officer.¹⁸⁰ The hearing committees and officers have the power to conduct hearings in formal disciplinary proceedings and on petitions for reinstatement.¹⁸¹ A formal disciplinary proceeding will be instituted when it is approved or ordered by a Reviewing Board Member or when the respondent demands one.¹⁸²

According to Rule 8 of the Rules of Professional Conduct, it is professional misconduct for a lawyer to: "violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another; commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; fail to cooperate during the course of an ethics investigation or disciplinary proceeding; state or imply an ability to influence improperly a government agency or official; or knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law."¹⁸³ Misconduct can lead to private informal admonition, private reprimand, public reprimand, public censure, suspension, or disbarment.¹⁸⁴

A private informal admonition signifies that misconduct has been found but it is not of sufficient gravity to warrant a formal disciplinary

177. Rules of the Supreme Court of the State of Hawaii, available at <http://www.state.hi.us>.
178. *Id.*

179. "Misconduct shall not be regarded as minor if any of the following conditions exist: misappropriation of a client's funds or property; loss of money, legal rights, or valuable property rights; respondent was publicly disciplined within the past three (3) years; the misconduct involved is of the same nature as misconduct for which the respondent was disciplined within the past five (5) years; the misconduct included dishonesty, misrepresentation, deceit, or fraud; or the commission of a felony."
180. Rules of the Supreme Court of the State of Hawaii, available at <http://www.state.hi.us>.
181. *Id.*

182. Rules of the Disciplinary Board, available at <http://www.state.hi.us>.
183. *Id.*

184. Rules of the Supreme Court of the State of Hawaii, available at <http://www.state.hi.us>.

proceeding.¹⁸⁵ It may be imposed by Counsel at the conclusion of an investigation based on the facts of the case upon the approval of the Board.¹⁸⁶ A private reprimand signifies that misconduct has been found, and that while the matter does not warrant the filing of a report with the Supreme Court, the misconduct is too serious to be addressed by a private informal admonition.¹⁸⁷ A public reprimand signifies that misconduct was found, that it does not warrant a report to the Supreme Court, but it was too serious for either a private informal admonition or a private reprimand.¹⁸⁸

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently extremely low. The percentage of actual disciplines imposed compared with number of charges filed has remained slightly higher and fairly constant, ranging from 6% to 12%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	3832	3755	4254	4119	4201	4308	4473	4573	4553	4700	4726
Complaints Received	618	824	651	676	644	655	606	602	523	549	466
Complaints Investigated	339	516	471	925	909	1002	819	883	707	448	860
Num. Formal Charges	11	17	8	8	8	11	12	9	9	4	2
Percentage of Formal Charges Compared with Complaints	2%	2%	1%	1%	1%	2%	2%	1%	2%	<1%	<1%
Total Number of Disciplines Imposed	74	80	48	41	49	76	60	65	56	58	28
Percentage of Disciplines Imposed Compared to Complaints Recd	12%	10%	7%	6%	8%	12%	10%	11%	11%	11%	6%

IDAHO

In Idaho, Bar Counsel is in charge of evaluating all information and grievances coming to his attention to determine the nature of the grievance.¹⁸⁹ Upon the conclusion of the investigation, Bar Counsel may dismiss the matter as unfounded or may take disciplinary action.¹⁹⁰ Either the grievant or the respondent may request review of the decision by a Hear-

185. Rules of the Disciplinary Board, available at <http://www.state.hi.us>.

186. *Id.*

187. *Id.*

188. *Id.*

189. Complaint Processing Procedure, available at <http://www.idaho.gov/isb>.

190. *Id.*

ing Committee of Bar Counsel's disposition.¹⁹¹ After review, the Hearing Committee can remand the matter, approve the Bar Counsel's disposition, dismiss the matter, or recommend formal charges.¹⁹² If the Hearing Committee's decision results in a sanction being imposed, either the grievant or the respondent may seek Supreme Court review of the Hearing Committee's decision.¹⁹³

According to the Rules, a lawyer "should be professionally answerable only for offenses that indicate a lack of those characteristics relevant to law practice." The Supreme Court of Idaho has the authority to order disbarment, suspension, public censure, and probation.¹⁹⁴ The Professional Conduct Board is granted the authority to order public reprimand, private reprimand, and informal admonition.¹⁹⁵ Although there "is no 'set' guideline available as to the sanction to be imposed based on the misconduct," generally it will be considered grounds for discipline if a lawyer is convicted of a "serious crime,"¹⁹⁶ is sanctioned for an act or omission which violates the Idaho Rules of Professional Conduct, or if the lawyer fails to cooperate with or respond to disciplinary authorities.¹⁹⁷ An attorney may be disbarred or suspended by the Supreme Court for either of the following causes: his conviction of a felony or misdemeanor involving moral turpitude; willful disobedience or violation of an order of the court and any violation of oath; corruptly and without authority appearing as attorney for a party; lending his name to be used as an attorney and counselor by any other person who is not an attorney or counselor; failure for ten days after written demand, and payment or tender of fees or expenses due him from his client to pay over or deliver any money or property belonging to his client; or habitual intemperance to such an extent that it disqualifies such attorney from faithfully discharging the duties devolving upon him.¹⁹⁸ Disbarment represents that a lawyer is unfit to practice law.¹⁹⁹

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. With the exception of one year, the percentage of formal charges compared with complaints filed has

191. *Id.*

192. Idaho Bar Commission Rules, available at http://isb.idaho.gov/pdf/rules/ibcr_sec5_discipline.pdf.

193. Bar Counsel Dispositions of Grievances and Professional Conduct Board Review of Bar Counsel's Dispositions, available at http://isb.idaho.gov/pdf/bar_counsel/bc_complaint_process.pdf.

194. Idaho Bar Commission Rules, available at http://isb.idaho.gov/pdf/rules/ibcr_sec5_discipline.pdf.

195. *Id.*

196. Includes the failure to report a conviction. See Idaho Bar Commission Rules, Rule 505, available at <http://isb.idaho.gov/pdf/rules/ibcr.pdf>.

197. Idaho Bar Commission Rules, available at <http://isb.idaho.gov/pdf/rules/ibcr.pdf>.

198. Idaho Statutes, Title 3, Chapter 3 Disbarment, available at <http://www.legislature.idaho.gov/idstat/Title3/T3CH3SECT3-301.htm>.

199. Idaho Bar Commission Rules, available at http://isb.idaho.gov/pdf/rules/ibcr_sec5_discipline.pdf.

been consistently low. However, the percentage of actual disciplines imposed compared with number of charges filed has fluctuated dramatically, from earlier years reported at less than 1%, up to 34% and most recently,

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	3011	3088	n/a	3227	3319	3447	3570	3637	3837	3988	4094
Complaints Received	465	463	n/a	70	407	397	413	344	448	414	432
Complaints Investigated	515	506	n/a	115	56	117	213	206	260	351	452
Num. Formal Charges	10	13	n/a	8	11	19	11	13	4	9	12
Percentage of Formal Charges Compared with Complaints	2%	3%	n/a	11%	3%	5%	3%	4%	1%	2%	3%
Total Number of Disciplines Imposed	2	2	n/a	24	35	38	59	80	69	49	109
Percentage of Disciplines Imposed Compared to Complaints Recd	<1%	<1%	n/a	34%	9%	10%	14%	23%	15%	12%	25%

25%.

ILLINOIS

The Attorney Registration and Disciplinary Commission is charged with regulating and disciplining attorneys for ethical violations of the Illinois Rules of Professional Conduct.²⁰⁰ As an agency of the Illinois Supreme Court, it is responsible for determining whether a complaint should be formally brought to the Supreme Court, who then makes the ultimate decision if an attorney has engaged in misconduct.²⁰¹ The ARDC is composed of seven members, four lawyers and three non-lawyers.²⁰²

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional conduct, the complainant must file a grievance in writing with the ARDC.²⁰³ There is no special form to request an investigation; however, the complaint should include basic contact information, a description of what the lawyer did or did not do, as well as any supporting documents.²⁰⁴

The Illinois Rules of Professional Conduct lists the conduct that would warrant a violation:²⁰⁵

200. ARDC Overview, <https://www.iardc.org/overview.html>.

201. Filing a Request For an Investigation of an Attorney, https://www.iardc.org/htr_filingarequest.html.

202. ARDC Overview, <https://www.iardc.org/overview.html>.

203. Filing a Request For an Investigation of an Attorney, https://www.iardc.org/htr_filingarequest.html.

204. *Id.*

205. Illinois Rules of Professional Conduct, Rule 8.4 https://www.iardc.org/htr_filingarequest.html.

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (d) engage in conduct that is prejudicial to the administration of justice.
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge or a member of the judge's family may receive under Rule 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph.
- (g) present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter.
- (h) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission.
- (i) avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this

paragraph, but the discharge shall not preclude a review of the lawyer's conduct to determine if it constitutes bad faith.

(j) violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.

(k) if the lawyer holds public office:

- (1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such action is not in the public interest;
- (2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or
- (3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed.

Once a request for investigation is filed with the ARDC Office, the request is assigned to a Commission lawyer who reviews the request and determines whether there is a basis for the ARDC to investigate.²⁰⁶ If the committee decides to do an investigation, a copy of the complaint is sent to the attorney and a response to the complaint is requested.²⁰⁷ Once the

206. Filing a Request for an Investigation of an Attorney, https://www.iardc.org/htr_filingarequest.html.

207. *Id.*

attorney responds and all of the pertinent facts are obtained, the committee determines whether further action is warranted.²⁰⁸

If further action is warranted the investigation is sent to the Inquiry Board, comprised of two lawyers and one non-lawyer to determine whether disciplinary proceedings should be initiated.²⁰⁹ If the Inquiry Board determines formal changes should be filed, the Administrator files a complaint with the Clerk of Commission and the matter proceeds before a Hearing Board.²¹⁰ The Hearing Board is comprised of two lawyers and one non-lawyer who hears the evidence, makes findings of fact, and recommends disciplinary action.²¹¹ If neither party objects to the recommendation of the Hearing Panel an agreement is submitted to the Supreme Court for final order.²¹²

However, if either party files an exception to the Hearing Board report, the case is sent to a Review Board, consisting of nine lawyer members who also hear evidence and either approves, modifies, or rejects the findings of facts and recommendations of the Hearing Board.²¹³ This report is then submitted to the Supreme Court for final order.²¹⁴ The Supreme Court can then enter a disciplinary action of:

- disbarment
- suspension for a specified period
- suspension until further order of the court
- probation in conjunction with either type of suspension
- Censure
- Reprimand.²¹⁵

The Hearing panel looks to the level of the alleged misconduct to determine the appropriate action. Illinois Rules of Professional Conduct indicate that, "Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice."²¹⁶

208. *Id.*

209. *Id.*

210. ARDC Overview, <https://www.iardc.org/overview.html>.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. ARDC Overview, <https://www.iardc.org/overview.html>.

216. *Id.*

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. With the exception of one recent year, the percentage of formal charges compared with complaints filed has also been consistently low. The percentage of actual disciplines imposed compared with number of charges filed has remained extremely constant and low, ranging from 4% to 6%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	72016	73514	73661	74311	75421	76671	78101	80041	81146	82380	83908
Complaints Received	6048	5877	5716	5811	6182	6325	6070	6082	5801	5988 ²¹⁷	5897
Complaints Investigated ²¹⁸	6913	6830	6758	6781	6912	7008	6957	6566	5746	6070	6127
Num. Formal Charges	165	123	125	148	145	184	174	147	215	279	228
Percentage of Formal Charges Compared with Complaints	3%	2%	2%	3%	2%	3%	3%	2%	4%	9%	4%
Total Number of Disciplines Imposed	328	260	267	267	266	295	334	347	308	261	297
Percentage of Disciplines Imposed Compared to Complaints Recd	5%	4%	5%	5%	4%	5%	6%	6%	5%	4%	5%

INDIANA

The Indiana Disciplinary Commission is the agency of the Indiana Supreme Court responsible for investigating and prosecuting claims of misconduct.²¹⁹ The Commission is appointed by the Supreme Court, consisting of seven lawyers and two non-lawyers.²²⁰ The Indiana Rules for Admission to the Bar and Discipline of Attorneys, indicates that attorneys may be disciplined for violation of the Rules of Professional Conduct.²²¹

If a complainant believes an attorney has acted in a manner that violates an issue under the Indiana Rules of Professional conduct, the complainant must file a grievance in writing with the Disciplinary Commission.²²² The grievance must be on a specific form available on-line or from contacting the office.²²³

217. Includes matters handled by central intake.

218. Illinois intake includes matters handles by a central intake. Systems www.abanet.org/cpr/discipline/sold/home.html (last visited May 20, 2008).

219. About the Commission, <http://www.in.gov/judiciary/discipline/about.html>.

220. *Id.*

221. Indiana Rules for Admission to the Bar and Discipline of Attorneys, Rule 23, Section 2.

222. Complaining About Lawyer Misconduct, <http://www.in.gov/judiciary/discipline/complaining.html>.

223. *Id.*

The Indiana Rules of Professional Conduct lists the conduct that would warrant a violation:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) Engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge's finding that preemptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.²²⁴

Once a complaint is filed with the Disciplinary Commission, the Commission determines whether the complaint raises a substantial question of misconduct.²²⁵ If the Commission believes there is a substantial question of misconduct, an investigation with the entire Commission takes place.²²⁶ If the investigation then reveals probable misconduct for which the Commission believes the attorney should be disciplined, the Commission files a complaint with the Clerk of Supreme Court formally charging the attorney

224. Indiana Rules Of Professional Conduct, Rule 8.4.

225. Complaint Screening and Investigation, <http://www.in.gov/judiciary/discipline/screening.html>.

226. *Id.*

<http://www.in.gov/judiciary/discipline/>

with misconduct.²²⁷ Once a formal complaint is filed, the Supreme Court appoints a hearing officer who hears the evidence from the Commission and prepares a written report for the Supreme Court so they can make a final decision.²²⁸ If the Supreme Court finds the attorney has engaged in misconduct one of the following actions can take place:

- (a) One of the following types of discipline may be imposed upon any attorney found guilty of misconduct: permanent disbarment from the practice of law; suspension for a definite or an indefinite period from the practice of law subject to reinstatement as hereinafter provided; suspension for a definite period, not to exceed six (6) months, from the practice of law with provision for automatic reinstatement upon such conditions as the Court shall specify in the order of suspension; a public reprimand; a private reprimand; or a private administrative admonition.²²⁹

If the Commission believes the attorney is guilty of misconduct that would not warrant a sanction greater than a reprimand the Commission does not have to file a formal complaint and can resolve the matter administratively.²³⁰ However, the Indiana Rules for Admission to the Bar and Discipline of Attorneys lists the conduct that does *not* warrant minor misconduct:

- (1) The misconduct involves misappropriation of funds or property;
- (2) The misconduct resulted in or is likely to result in material prejudice (loss of money, legal rights or valuable property rights) to a client or other person;
- (3) The respondent has been publicly disciplined in the past three (3) years;
- (4) The misconduct involved is of the same nature as misconduct for which the respondent has been publicly or privately disciplined in the past five (5) years;
- (5) The misconduct includes dishonesty, misrepresentation, deceit, or fraud on the part of the respondent; or

227. *Id.*

228. The Discipline Process, <http://www.in.gov/judiciary/discipline/process.html>.

229. Indiana Rules for Admission to the Bar and Discipline of Attorneys, Rule 23, Section 3.

230. Indiana Rules for Admission to the Bar and Discipline of Attorneys, Rule 23, Section 12 (a).

(6) The misconduct constitutes the commission of a felony under applicable law.²³¹

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently extremely low. In addition, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 6% to 11%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	13785	14143	14495	14786	15041	14918	15182	15508	16537	16885	17171
Complaints Received	1565	1596	1599	1582	1553	1545	1626	1625	1589	1598	1582
Complaints Investigated	1815	1792	1760	1664	1559	1494	1406	1486	1386	1477	1615
Num. Formal Charges	54	69	59	56	62	37	54	41	42	34	47
Percentage of Formal Charges Compared with Complaints	3%	4%	4%	4%	4%	2%	3%	3%	3%	2%	3%
Total Number of Disciplines Imposed	121	121	151	166	175	173	124	135	101	124	109
Percentage of Disciplines Imposed Compared to Complaints Recd	8%	8%	9%	10%	11%	11%	8%	8%	6%	8%	7%

IOWA

The Iowa Supreme court is responsible for regulating the state bar by enforcing the rules of professional conduct and imposing sanctions.²³² The court has designated two groups to assist with attorney discipline, the Attorney Disciplinary Board and the Grievance Commission.²³³

Any complaint against an attorney is first investigated by the Board.²³⁴ The Board can dismiss the complaint, admonish or reprimand the attorney, or, after an investigation, file and prosecute the complaint before the Commission.²³⁵

The Grievance Commission hears complaints that are prosecuted by the Board.²³⁶ All matters brought before the Commission are confidential,

231. *Id.*

232. Iowa Judicial Branch, http://www.iowacourts.gov/Professional_Regulation (follow "Attorney Discipline" hyperlink; then follow "A summary" hyperlink).

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

and the attorney has the right to respond to the complaint.²³⁷ The Commission holds a hearing to determine the allegations in the complaint, and then may either dismiss the complaint, issue a private admonition, or recommend to the Supreme Court that the attorney be reprimanded or the attorney's license to practice law be suspended or revoked.²³⁸

The Iowa Rules of Professional Conduct characterize misconduct as the following:²³⁹

(a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer's direction and control to do so.

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed has varied widely, from an earlier high of 15% down to 3% and in the most recent year reported, only 4%. However, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constantly high compared to other states, ranging from 15% to the most recent year's 34%.

237. *Id.*

238. Iowa Judicial Branch, http://www.iowacourts.gov/Professional_Regulation (follow "Attorney Discipline" hyperlink; then follow "A summary" hyperlink).

239. Iowa Ct. R. Ch. 32 R. 8.4 (2005).

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	7409	7787	8000	8000	8000	8031	8342	8269	8400	8578	8685
Complaints Received	610	610	447	537	545	472	641	814	936	904	667
Complaints Investigated	444	471	462	421	520	503	644	659	787	799	532
Num. Formal Charges	91	83	24	15	15	41	23	50	62	40	45
Percentage of Formal Charges Compared with Complaints	15%	14%	5%	3%	3%	9%	4%	6%	7%	7%	4%
Total Number of Disciplines Imposed	136	139	147	126	122	137	179	121	166	220	226
Percentage of Disciplines Imposed Compared to Complaints Recd	22%	23%	33%	23%	22%	29%	28%	15%	18%	24%	34%

KANSAS

The Supreme Court of Kansas has established procedures for investigating complaints of attorney misconduct and reaching judgments on lawyer discipline.²⁴⁰ The court has designated the Office of the Disciplinary Administrator to investigate misconduct and recommend sanctions for the Supreme Court to impose.²⁴¹

Complaints are investigated by local bar associations or the Disciplinary Administrator's staff.²⁴² Once the investigation is complete, a review committee consisting of three lawyers is assigned to study the complaint and investigative report.²⁴³ The committee may then dismiss the complaint if it is found to be without merit.²⁴⁴ If the review committee finds probable cause to believe the lawyer has violated the disciplinary rules the matter becomes public.²⁴⁵ The review committee may informally admonish the lawyer.²⁴⁶ If discipline stronger than this informal admonition appears warranted, the committee may direct the Disciplinary Administrator to prepare a formal complaint.²⁴⁷

The hearing panel consists of three lawyers, including at least two members of the Kansas Board for Discipline of Attorneys.²⁴⁸ The hearing panel may find no violation of the disciplinary rules occurred and dismiss the complaint.²⁴⁹ Alternatively, it may determine that a minor violation occurred as a result of a mistake rather than an intentional act and may impose informal admonition.²⁵⁰ If the hearing panel finds that a violation

240. Kansas Judicial Branch, <http://www.kscourts.org> (follow "Attorney Discipline" hyperlink; then follow "Lawyer Complaint Process" hyperlink).

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. Kansas Judicial Branch, <http://www.kscourts.org> (follow "Attorney Discipline" hyperlink; then follow "Lawyer Complaint Process" hyperlink).

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

occurred and more serious discipline is warranted, the panel submits to the Kansas Supreme Court a formal report setting forth its factual and legal findings and making recommendations for discipline of the lawyer.²⁵¹ Recommended discipline could be public censure, probation with conditions, suspension of the lawyer's license for a specific time period, suspension for an indefinite period or disbarment.²⁵²

Discipline cases submitted to the Supreme Court are processed in much the same way as any other appellate case with both sides entitled to present written and oral arguments.²⁵³ In addition, the Supreme Court reviews a transcript of the proceedings before the hearing panel.²⁵⁴ The Supreme Court need not follow the recommendations of the hearing panel or the Disciplinary Administrator.²⁵⁵ The Court may determine that no violation occurred or it may impose a different form of discipline from that recommended by the hearing panel.²⁵⁶

The Kansas Rules of Professional Conduct characterize misconduct as the following:²⁵⁷

- (a) Violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official;
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed has remained recently fairly con-

251. *Id.*

252. Kansas Judicial Branch, <http://www.kscourts.org> (follow "Attorney Discipline" hyperlink; then follow "Lawyer Complaint Process" hyperlink).

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. Kansas Ct. R. R. 226 R. 8.4 (2007).

stant, down from a high in 1999 of 16%, staying recently in the 5%-7% range. In contrast, the percentage of actual disciplines imposed compared with number of charges filed has remained slightly higher, ranging from 9% to 22%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	11100	11449	9159	9276	9623	9740	14371	10100	10166	10532	10872
Complaints Received	864	777	929	922	1024	954	955	937	934	893	856
Complaints Investigated	283	269	606	582	329	571	461	555	457	524	532
Num. Formal Charges	99	122	75	98	69	n/a	74	48	48	53	64
Percentage of Formal Charges Compared with Complaints	11%	16%	8%	11%	7%	n/a	8%	5%	5%	6%	7%
Total Number of Disciplines Imposed	97	127	108	128	100	208	89	97	96	106	128
Percentage of Disciplines Imposed Compared to Complaints Recd	11%	16%	12%	14%	10%	22%	9%	10%	10%	12%	15%

KENTUCKY

The Kentucky Bar Association, acting as an agency of the Supreme Court, is responsible for investigating complaints against lawyers and for prosecuting charges of professional misconduct issued by the Inquiry Commission.²⁵⁸ "The Inquiry Commission is an independent body appointed by the Court to receive and process complaints which allege misconduct by lawyers."²⁵⁹ The Office of Bar Counsel provides administrative support to the Inquiry Commission, investigates complaints, and prosecutes charges.²⁶⁰ All complaints are directed to the Consumer Assistance Program (CAP) or the Office of Bar Counsel (OBC) for a preliminary review, to determine whether it alleges an ethical violation.²⁶¹ If the complaint is recommended for further review, then it will be assigned to a lawyer in the Office of Bar Counsel, who acts as an investigator.²⁶²

Once the Bar Counsel lawyer concludes the investigation, it is presented to the Inquiry Commission for review, who further investigates the

258. Office of Bar Counsel Overview, available at <http://www.kybar.org/234>.
259. *Id.*
260. *Id.*

261. Questions and Answers About Filing a Complaint Against a Lawyer, available at http://www.kybar.org/documents/obc/complaint_info.pdf; "Consumer Assistance is set up to informally mediate attorney and client disputes that involve communication issues between an attorney and client."
262. *Id.*

complaint and decides whether or not probable cause exists to believe that the respondent is guilty of a violation.²⁶³ The Inquiry Committee has the option of dismissing the complaint, requiring further investigation, or issuing a letter of private admonition.²⁶⁴

The Kentucky Supreme Court ultimately has the power to discipline a lawyer who is guilty of an ethics violation, including to privately admonish a lawyer, issue a private or public reprimand, suspend the lawyer's license, or enter an order of disbarment.²⁶⁵ The sanction in a particular case will depend on the nature of the misconduct and the surrounding circumstances.²⁶⁶

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed in recent years has also been very consistently low, staying between 2% and 6% after an earlier year's high of 19%. Similarly, the percentage of actual disciplines imposed compared with number of charges filed has remained recently fairly constant, ranging from 9% to 13% after some earlier years at a higher percentage.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	12517	12844	13000	n/a	13892	14924	14400	14960	15316	15581	15947
Complaints Received ²⁶⁷	562	508	n/a	n/a	1077	953	1150	1305	1297	1285	1199
Complaints Investigated	564	508	n/a	n/a	735	1551	1371	1259	1985	1091	1069
Num. Formal Charges	76	97	77	n/a	23	38	69	52	48	50	47
Percentage of Formal Charges Compared with Complaints	14%	19%	n/a	n/a	2%	4%	6%	4%	4%	4%	4%
Total Number of Disciplines Imposed	110	113	113	n/a	96	120	146	151	137	135	115
Percentage of Disciplines Imposed Compared to Complaints Recd	20%	22%	n/a	n/a	9%	13%	13%	12%	11%	11%	10%

LOUISIANA

In Louisiana, the Attorney Disciplinary Board is ultimately responsible for attorney discipline, after an evaluation by the Office of Disciplinary

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. In Kentucky, some numbers are estimated and complaints received includes central intake matters. Systems www.abanet.org/cpr/discipline/sold/home.html (last visited May 20, 2008).

Counsel as to whether there is sufficient evidence to support a finding of a rule violation.²⁶⁸ If there is inadequate evidence to support a clear finding of misconduct, then the complaint will be dismissed.²⁶⁹ If it is determined necessary to institute discipline that is more serious than a private admonition, then there will be a formal disciplinary proceeding.²⁷⁰ Upon completion of a formal disciplinary hearing, a written report is prepared by the hearing committee for review by the Disciplinary Board.²⁷¹ When a hearing committee finds unethical conduct warranting discipline, the hearing committee's report and recommendation are forwarded to and considered by the Board, who then imposes the appropriate discipline.²⁷²

The possible sanctions possible for an attorney in Louisiana are private admonition, public reprimand, suspension, and disbarment.²⁷³ According to the Board, it takes "proof of unethical conduct" to justify disciplinary action.²⁷⁴ However, only the Louisiana Supreme Court can order suspension or disbarment.²⁷⁵

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed has remained fairly consistently low ranging from 2% to 7%. The percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 6% to 11%.

268. Louisiana Attorney Disciplinary Board, available at http://www.ladb.org/evaluation_and_disposition.asp.

269. *Id.*

270. *Id.*

271. Louisiana Attorney Disciplinary Board, available at http://www.ladb.org/disciplinary_board_review.asp.

272. *Id.*

273. *Id.*; see also http://www.ladb.org/review_by_louisiana_supreme_court.asp.

274. Louisiana Attorney Disciplinary Board, available at http://www.ladb.org/unethical_behavior.asp; Examples of prohibited conduct which may be cause for discipline: a lawyer cannot or will not give you money that he is holding on your behalf and to which you are entitled, or will not provide a complete written accounting; a lawyer continuously fails to respond at all to inquiries about your case, to tell you about court dates, or to appear in court; A lawyer advises you or anyone else to lie, or lies himself in the course of a case; a lawyer represents one party to a transaction while also the attorney for the other side; a lawyer misrepresents to you whether or not they have taken certain actions.

275. Louisiana Attorney Disciplinary Board, available at http://www.ladb.org/review_by_louisiana_supreme_court.asp.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	17803	18107	25312	18785	19028	19337	19663	20049	20252	20228	20145
Complaints Received	3056	2873	2985	2631	2788	2847	2664	2790	2658	2712	3098
Complaints Investigated	3093	3369	4228	4378	4370	4788	4200	3905	3759	3810	3899
Num. Formal Charges	90	199	153	111	157	107	68	62	139	113	135
Percentage of Formal Charges Compared with Complaints	3%	7%	5%	4%	6%	4%	3%	2%	5%	4%	4%
Total Number of Disciplines Imposed	199	307	215	236	178	249	254	195	193	190	203
Percentage of Disciplines Imposed Compared to Complaints Recd	7%	11%	7%	9%	6%	9%	10%	7%	7%	7%	7%

MAINE

Maine has established the Board of Overseers of the Bar to monitor the behavior of attorneys in the state.²⁷⁶ The Board consists of six lawyers appointed by the court and three public members who are recommended by the Governor of the state.²⁷⁷ The Board's main goal is to uphold and enforce the Maine Bar Rules adopted by the court.²⁷⁸ Under these rules, the Board must appoint an attorney to act as counsel for the bar (Bar Counsel).²⁷⁹ Bar Counsel is appointed to investigate allegations of misconduct and may also litigate grievances when authorized to do so by a reviewing panel of the Grievance Commission.²⁸⁰

The Grievance Commission was established to resolve complaints against lawyers for violations of the Code of Professional Responsibility.²⁸¹ The Bar Counsel must first decide whether the complaint alleges conduct that appears to violate the Code.²⁸² If such allegations do not appear, Bar Counsel must dismiss the case.²⁸³ If, however, Bar Counsel finds that the complaint does allege a violation of the Code, an investigation will be conducted by Bar Counsel, and then later reviewed by a panel of the Grievance Commission.²⁸⁴ The panel determines whether the com-

276. Board of Overseers of the Bar, Annual Report, 2007, available at <http://www.mebaroverseers.org/> (last visited November 16, 2010).

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. Board of Overseers of the Bar, Annual Report, 2007, available at <http://www.mebaroverseers.org/> (last visited November 16, 2010).

283. *Id.*

284. *Id.*

plaint should be dismissed or whether sufficient grounds exist for a public disciplinary hearing to occur.²⁸⁵ If the panel finds probable cause to believe that misconduct subject to sanction has occurred, it will then direct Bar Counsel to file a formal public disciplinary petition, which is then heard by a different panel of the Grievance Commission.²⁸⁶

Once the panel determines that sufficient grounds exist for a public hearing to occur, and that hearing does occur, the panel may issue a sanction.²⁸⁷ The panel may dismiss the complaint, dismiss it with a warning, issue a public reprimand, or file an information.²⁸⁸ The panel will dismiss the petition if it finds that no misconduct subject to sanction has occurred.²⁸⁹ It will dismiss the petition with a warning when it finds that misconduct subject to sanction has occurred but that misconduct is minor and has caused little or no injury to the client, the public, the legal system, or the profession, and that there is little likelihood of repetition by the attorney.²⁹⁰ If the panel finds probable cause for suspension or disbarment, it will direct Bar Counsel to commence an attorney discipline action by filing an information.²⁹¹ In determining the appropriate sanction, Maine has established a set of factors for the panel to take into consideration.²⁹² Those factors include: "(1) whether the attorney has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the attorney acted intentionally, knowingly, or negligently; (3) the amount of actual or potential injury cause by the misconduct; and (4) the existence of any aggravating or mitigating factors."²⁹³ A balancing of these factors will determine which sanction is appropriate.

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed has remained consistent, ranging from 4% to 7%. The percentage of actual disciplines imposed compared with number of charges filed has varied more widely, ranging from a low of 5% up to 34% and the most recent year's 31%.

285. *Id.*

286. *Id.*

287. *Id.*

288. Board of Overseers of the Bar, Annual Report, 2007, available at <http://www.mebaroverseers.org/> (last visited November 16, 2010).

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.*

293. *Id.*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	3875	3875	4868	4454	4352	4300	4820	4760	4819	4869	4879
Complaints Received	194	164	298	319	368	315	328	399	348	342	377
Complaints Investigated	221	190	275	401	204	323	388	338	314	381	281
Num. Formal Charges	11	9	12	21	18	16	25	22	21	21	22
Percentage of Formal Charges Compared with Complaints	6%	5%	4%	7%	5%	6%	8%	6%	6%	6%	6%
Total Number of Disciplines Imposed	30	28	18	16	35	99	112	34	73	52	115
Percentage of Disciplines Imposed Compared to Complaints Recd	15%	17%	6%	5%	10%	31%	34%	9%	21%	15%	31%

MARYLAND

Maryland has established the Attorney Grievance Commission, whose responsibility is to "assist in protecting the public by enforcing the professional standards that regulate the conduct of lawyers and by educating lawyers about their professional responsibilities."²⁹⁴ The Commission appoints an attorney to serve as Bar Counsel.²⁹⁵ This attorney acts as the Chief Executive Officer of the disciplinary system.²⁹⁶ The Commission supervises the activities of Bar Counsel, whose activities include investigating possible misconduct, reviewing escrow account overdrafts, investigating unauthorized practice of law, and investigating petitions for reinstatement.²⁹⁷ Bar Counsel is given ninety days to investigate complaints.²⁹⁸ The cases that are not resolved in this time period are delivered to a three-member Peer Review Panel that will handle the complaint confidentially.²⁹⁹ Upon completion of an investigation by Bar Counsel or the peer review, the Commission will either approve or disapprove the recommended disposition.³⁰⁰ These recommendations include dismissal of the case, dismissal with a warning, reprimand with the consent of Bar Counsel and respondent or without the consent of Bar Counsel, a Conditional Diversion Agreement, or the immediate filing of a Petition for Disciplinary or Remedial Action.³⁰¹ The Commission is also authorized to direct Bar Counsel to file public charges against an attorney in the Court of Appeals regard-

294. Maryland Attorney Grievance Commission, available at www.mdcourts.gov/attygrievance/index.html.

295. *Id.*

296. *Id.*

297. *Id.*

298. 2002 Final State Legislative Program, available at http://www.msba.org/sec_comm/committees/lawscomm/legislativeprogram02/attydisc.htm.

299. *Id.*

300. Maryland Attorney Grievance Commission, available at www.mdcourts.gov/attygrievance/index.html.

301. *Id.*

less of the recommendation of Bar Counsel or a peer review panel.³⁰² The Court of Appeals may order a remand for further proceedings, dismissal, inactive status, reprimand, suspension or disbarment.³⁰³

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed, while not available every year, as remained fairly low when reported, from 2% up to 8%. More information has been released on the percentage of actual disciplines imposed compared with number of charges filed, which have remained fairly constant, ranging from 6% to 10%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	27234	28230	29166	29863	30646	31224	31934	33000	32390	33487	33400
Complaints Received	1929	1983	1891	1870	1888	2034	2095	2031	1844	1940	2053
Complaints Investigated	1205	1317	1243	1098	1888	2034	2095	884	812	722	759
Num. Formal Charges	n/a	n/a	n/a	34	104	104	80	115	140	57	54
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	2%	5%	5%	4%	6%	8%	3%	3%
Total Number of Disciplines Imposed	167	155	156	160	187	142	160	145	145	114	155
Percentage of Disciplines Imposed Compared to Complaints Recd	9%	8%	8%	9%	10%	7%	8%	7%	8%	6%	8%

MASSACHUSETTS

In Massachusetts, the Board of Bar Overseers was established with the purpose of regulating lawyer discipline.³⁰⁴ Inquiries concerning the professional conduct of an attorney are initially handled by the Attorney and Consumer Assistance Program (ACAP), a part of the Office of Bar Counsel of the Board of Bar Overseers.³⁰⁵ After screening by ACAP, complaint forms are submitted to the Office of the Bar Counsel.³⁰⁶ The Board of Bar Overseers can either administer or recommend to the Supreme Judicial Court appropriate disciplinary action against those who have been found guilty of misconduct.³⁰⁷ The matter will be presented to a hearing committee when it appears that there was serious misconduct, where the Office of

302. *Id.*

303. The Attorney Grievance Commission of Maryland, 33rd Annual Report, 2008.

304. Massachusetts Bar Association, available at <http://www.massbar.org/about-the-mba>.

305. How to File a Complaint, available at <http://www.mass.gov/obcbbo/complaint.htm>.

306. How to File a Complaint, available at <http://www.mass.gov/obcbbo/complaint.htm>.

307. Massachusetts Bar Association, available at <http://www.massbar.org/about-the-mba>.

Bar Counsel investigates and prosecutes the complaint before the hearing committee.³⁰⁸ At the completion of the hearing process, the hearing committee submits a report to the Board along with its recommendation for discipline.³⁰⁹

In Massachusetts, the Board may impose admonition and public reprimand, whereas the Supreme Judicial Court may impose suspension and disbarment.³¹⁰

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has remained fairly constant, but higher than other states, from 7% to 17%. In addition, the percentage of actual disciplines imposed compared with number of charges filed has also remained fairly constantly higher than other states, ranging from 14% to 36%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	40857	41897	43181	43181	45727	46850	47721	48927	51165	52143	51999
Complaints Received ³¹¹	2338	2262	1570	1133	1179	1198	1097	929	1026	970	997
Complaints Investigated	3938	3893	3221	2559	2435	2483	2370	2112	2072	1925	1697
Num. Formal Charges	179	163	173	177	175	148	124	162	162	150	144
Percentage of Formal Charges Compared with Complaints	8%	7%	11%	16%	15%	12%	11%	17%	16%	15%	14%
Total Number of Disciplines Imposed	449	384	217	302	301	254	394	236	240	278	268
Percentage of Disciplines Imposed Compared to Complaints Recd	19%	17%	14%	27%	26%	21%	36%	25%	23%	29%	27%

MICHIGAN

In Michigan, the Attorney Grievance Commission (AGC) is the investigative and prosecutorial arm of the Supreme Court for allegations of attorney misconduct.³¹² The Attorney Discipline Board is the "adjudicative arm of the Supreme Court for matters in which the AGC has initiated formal proceedings."³¹³ Upon receipt of a request for investigation, the AGC intake attorneys evaluate the request to determine whether an investigation

308. Massachusetts Bar Association, available at <http://www.massbar.org/about-the-mba>.

309. Massachusetts Bar Association, available at <http://www.massbar.org/about-the-mba>.

310. How to File a Complaint, available at <http://www.mass.gov/obcbbo/complaint.htm>.

311. Massachusetts statistics do not include central intake matters.

312. Attorney Grievance Commission, available at <http://www.agcml.com/>.

313. *Id.*

is warranted.³¹⁴ If the intake attorney determines that an investigation is warranted, the file is then assigned to an attorney on the Grievance Administrator's Investigative staff.³¹⁵ Upon conclusion of the investigation, each matter is submitted to the Commissioners for their consideration and review.³¹⁶

In Michigan, the possible sanctions are probation, admonition, reprimand, suspension and disbarment.³¹⁷ Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, will private discipline be imposed.

According to the rules, admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a case,³¹⁸ in failing to provide a client with accurate information,³¹⁹ or in determining whether the representation of a client may be materially affected by the lawyer's own interests.³²⁰ Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client,³²¹ negligently reveals information relating to the representation of a client not otherwise permitted to be disclosed,³²² or when the lawyer is negligent in determining whether the representation of a client may be materially affected by the own interests.³²³ Disbarment is generally appropriate when a lawyer "knowingly converts client property and causes injury or potential injury to a client,"³²⁴ "with the intent to benefit the lawyer or another," or the lawyer "knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed,

314. Attorney Grievance Commission, available at <http://www.agcml.com/pages/InvestigationProcess.html>.

315. *Id.*

316. *Id.*

317. American Bar Association Standards for imposing Lawyer Sanctions, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf); adopted by the Michigan Supreme Court in *Grievance Administrator v. Lopatin*, 462 Mich 235 (2000).

318. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.5, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

319. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.6, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

320. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.3, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

321. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.1, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

322. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.2, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

323. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.3, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

324. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.1, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

and this disclosure causes injury or potential injury to a client;"³²⁵ or when the lawyer "engages in representation of a client knowing that the lawyer's interests are adverse to the client;" and last when a lawyer abandons the practice, knowingly fails to perform services, or engages in a pattern of neglect with respect to client matters and cause serious or potentially serious injury to a client.³²⁶ Suspension is generally appropriate in the following circumstances: "when a lawyer know or should know that he is dealing improperly with client property and causes injury or potential injury to the client,"³²⁷ when the lawyer reveals privileged information about the client,³²⁸ and when a lawyer "knowingly fails to perform services for a client and causes injury."³²⁹

The percentage of formal charges as compared with the active attorney population has remained at less than 1% population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently extremely low. With a high in the most recent year reported, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 6% to 16%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	32366	33087	34004	34473	24982	35224	35600	35920	38000	37668	40501
Complaints Received	3935	3505	3373	3575	3557	3583	3471	3541	3575	3293	2907
Complaints Investigated	2400	2260	3195	3294	1337	n/a	933	884	626	686	661
Num. Formal Charges	153	146	136	n/a	102	141	117	111	163	168	157
Percentage of Formal Charges Compared with Complaints	4%	4%	4%	n/a	3%	4%	3%	3%	5%	5%	5%
Total Number of Disciplines Imposed	411	399	432	370	198	374	249	399	366	475	469
Percentage of Disciplines Imposed Compared to Complaints Recd	10%	11%	13%	10%	6%	10%	7%	11%	10%	14%	16%

325. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.2, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

326. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.3, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

327. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.1, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

328. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.2, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

329. American Bar Association Standards for imposing Lawyer Sanctions, Rule 4.4, available at [http://www.adbmich.org/download/ABA%20STANDARDS%20\(1992\).pdf](http://www.adbmich.org/download/ABA%20STANDARDS%20(1992).pdf).

MINNESOTA

In Minnesota, all complaints must be sent to the Office of Lawyers Professional Responsibility.³³⁰ The Office of Lawyers Professional Responsibility is the agency established by the Minnesota Supreme Court to handle complaints of unprofessional conduct.³³¹ The Office investigates and prosecutes complaints against attorneys warranting professional discipline.³³² After receiving a complaint, the Office will respond by stating whether the complaint will be investigated or dismissed.³³³ Most complaints are referred to a District Ethics Committee (DEC), who will then appoint an investigator.³³⁴ The investigator contacts the attorney and the complainant and makes a recommendation to the Director,³³⁵ who is directly accountable to the Lawyers Professional Responsibility Board and responsible "for the proper administration of the Office of Lawyers Professional Responsibility" and the Rules.³³⁶ The Office of Lawyers Professional Discipline then decides whether or not a rule was violated warranting disciplinary action.³³⁷

The possible sanctions in Minnesota include: admonition,³³⁸ probation, an order to pay costs, suspension, and disbarment.³³⁹ The most common sanction is an admonition which is issued when "the lawyer's misconduct was isolated but relatively non-serious."³⁴⁰ Criminal conduct and misappropriation of funds are most likely to lead to disbarment.³⁴¹

The percentage of formal charges as compared with the active attorney population has remained at less than 1% population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently extremely low. By contrast, the percentage of actual disciplines imposed compared with number of charges filed has remained much higher ranging widely from 2% up to a high of 19%, and remaining consisting in the teens for the past several years.

330. Directions for Filing a Complaint, available at <http://www.mncourts.gov/lprb/filing.html>.
 331. About the Office of Lawyers Professional Responsibility, available at <http://www.mncourts.gov/lprb/index.asp?content=aboutOLPR>.
 332. *Id.*
 333. How Complaints are Handled, available at <http://www.mncourts.gov/lprb/olprbroch.html>.
 334. Directions for Filing a Complaint, available at <http://www.mncourts.gov/lprb/filing.html>.
 335. *Id.*
 336. Minnesota Rules on Lawyers Professional Responsibility, available at <http://www.mncourts.gov/lprb/rlpr.pdf>.
 337. How Complaints are Filed, available at <http://www.mncourts.gov/lprb/olprbroch.html>.
 338. *Id.*
 339. Minnesota Rules on Lawyers Professional Responsibility, available at <http://www.mncourts.gov/lprb/rlpr.pdf>.
 340. How Complaints are Filed, available at <http://www.mncourts.gov/lprb/olprbroch.html>.
 341. 2009 Annual Report, available at <http://www.mncourts.gov/lprb/09olprar.pdf>.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	21252	21213	21662	22420	22821	24163	25029	25576	25217	25775	22610
Complaints Received	1275	1278	1362	12246	1165	1168	1147	1150	1222	1226	1257
Complaints Investigated	1265	1186	1295	1224	1144	1135	1097	1119	1336	1252	1237
Num. Formal Charges	33	34	33	22	23	20	24	36	31	23	32
Percentage of Formal Charges Compared with Complaints	3%	3%	2%	<1%	2%	2%	2%	3%	3%	2%	3%
Total Number of Disciplines Imposed	236	188	213	226	181	188	161	202	208	201	207
Percentage of Disciplines Imposed Compared to Complaints Recd	19%	15%	16%	2%	16%	16%	14%	18%	17%	16%	17%

MISSISSIPPI

The Mississippi Bar is the arm of the Supreme Court of Mississippi which receives and investigates complaints alleging unethical conduct by lawyers.³⁴² Any attorney investigated will have an opportunity to respond. The complaint and the attorney's response will then be reviewed by the General Counsel's Office of the Mississippi Bar.³⁴³ The Office of the General Counsel may conduct an investigation or an investigatory hearing.³⁴⁴ General Counsel will then submit the complaint together with the attorney's response, General Counsel's report and the transcripts, if any, from the hearings, to the Committee on Professional Responsibility of the Mississippi Bar.³⁴⁵ The Committee on Professional Responsibility is appointed by the President of the Mississippi Bar.³⁴⁶ When the Committee reviews the report, it must decide whether or not the complaint should be dismissed, referred to General Counsel for additional investigation, or referred to General Counsel for filing of a formal complaint with the Supreme Court of Mississippi.³⁴⁷

The possible sanctions in Mississippi are private reprimand, public reprimand, suspension or disbarment, however only a Complaint Tribunal or the Supreme Court may impose discipline against an attorney.³⁴⁸ The

342. Complaint Procedure, available at <http://www.msbar.org/complaint.php>.
 343. *Id.*
 344. *Id.*
 345. *Id.*
 346. *Id.*
 347. *Id.*; the Committee will dismiss the complaint upon its first review if it determines that there has been no unprofessional or unethical conduct.
 348. *Id.*

tribunal will likely issue a private or public reprimand when it decides that it is deemed to "adequately afford the disciplinary sanctions required by the particular circumstances." According to Rule 6, whenever "any attorney shall be convicted...of any felony or of any misdemeanor involving fraud, dishonesty, misrepresentation, deceit, or willful failure to account for money or property of a client," the court must issue immediate suspension.³⁴⁹ When time for appeal expires or all appeals have been concluded without reversal, the court must then issue disbarment.³⁵⁰

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. Percentage of formal charges compared with complaints filed has also been fairly consistent, with one year at 1% but all other years reported in the 4% to 7% range. The percentage of actual disciplines imposed compared with number of charges filed has remained higher, ranging from 8% in this most recent year, to a high of 22%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	6200	6400	7947	8468	8758	9235	8174	9711	9988	8331	8465
Complaints Received	367	448	497	413	535	537	500	457	457	549	604
Complaints Investigated	35	45	50	70	34	32	55	37	34	28	21
Num. Formal Charges	n/a	17	18	27	6	35	27	17	19	22	37
Percentage of Formal Charges Compared with Complaints	n/a	4%	4%	7%	1%	7%	5%	4%	4%	4%	6%
Total Number of Disciplines Imposed	66	72	86	87	98	60	108	62	59	87	51
Percentage of Disciplines Imposed Compared to Complaints Recd	18%	16%	17%	21%	18%	11%	22%	14%	13%	16%	8%

MISSOURI

The Supreme Court of Missouri regulates attorney conduct in the state through the Office of the Chief Disciplinary Counsel (OCDC).³⁵¹ The OCDC is responsible for investigating allegations of misconduct by attorneys, prosecuting the cases where an attorney's misconduct poses a threat to the public or to the integrity of the legal profession, and maintaining current records of disciplinary information for lawyers licensed to practice law in Missouri.³⁵²

The Supreme Court of Missouri implements a system to help facilitate attorney client communication and resolve complaints without formal dis-

349. Rules of Discipline for the Mississippi State Bar, Rule 6: Suspensions and Disbarments Based on Other Proceedings, available at http://www.mscc.state.ms.us/rules/msrulesofcourt/rules_of_discipline.pdf.

350. *Id.*

351. Missouri Office of the Chief Disciplinary Counsel, <http://www.mochiefcounsel.org/ocdc.htm?id=9&cat=2>, (last visited Feb. 6, 2010).

352. *Id.*

cipline.³⁵³ The Complaint Resolution Program assists with the resolution of complaints that the Chief Disciplinary Counsel has determined are better resolved outside the formal disciplinary system.³⁵⁴ However, if this program is unsuccessful or there is a serious violation of the rules of professional responsibility a formal complaint must be filed.³⁵⁵

The OCDC provides the public with a complaint form that can be completed to file a complaint.³⁵⁶ A complainant can also draft a letter detailing the complaint.³⁵⁷ The complaint must specifically detail the grievances at issue in the complaint, as well as the name of all parties involved, and a case number and court name if a case is at issue.³⁵⁸ All complaints will be referred to Staff Counsel at the OCDC, who evaluate whether there are any issues which could form the basis for a disciplinary investigation.³⁵⁹ When a file is opened, the matter is investigated by the OCDC office in Jefferson City or referred to one of the regional disciplinary offices located in Kansas City, St. Louis or Springfield OCDC office.³⁶⁰ The attorney complained about is notified of the complaint and given an opportunity to respond to the allegations contained in the complaint.³⁶¹ When a response is received, the complainant is given an opportunity to review and reply to the attorney's response.³⁶² After any additional investigation is completed, a determination is made as to whether a violation of the Rules of Professional Conduct has occurred.³⁶³

The Missouri Supreme Court Rules list the conduct that would be considered professional misconduct and warrant sanctions:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

353. The Missouri Bar, <http://www.mobar.org/8c4388f4-45a6-4c72-93b9-ee6477a4a800.aspx>, (last visited Feb. 6, 2010).

354. *Id.*

355. *Id.*

356. Missouri Office of the Chief Disciplinary Counsel, <http://www.mochiefcounsel.org/ocdc.htm?id=9&cat=2>, (last visited Feb. 6, 2010).

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.*

362. Missouri Office of the Chief Disciplinary Counsel, <http://www.mochiefcounsel.org/ocdc.htm?id=9&cat=2>, (last visited Feb. 6, 2010).

363. *Id.*

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues.³⁶⁴

If the OCDC or the Regional Disciplinary Committee determines that no probable cause exists to believe that the attorney has violated the Rules of Professional Conduct, the complaint will be dismissed.³⁶⁵ However, if a determination is made that a violation of the Rules has occurred, disciplinary action can range from an admonition, issued by the OCDC or a Regional Disciplinary Committee, or discipline imposed by the Supreme Court.³⁶⁶ Supreme Court Discipline can include a reprimand, to a suspension from the practice of law for a definite or indefinite period of time, (with or without probation) to disbarment.³⁶⁷ Probation is an appropriate form of discipline when the attorney is unlikely to harm the public during the period of probation and can be adequately supervised, is able to perform legal services and is able to practice law without causing the courts

364. V.A.M.R. Rule 4 8.4

365. Missouri Office of the Chief Disciplinary Counsel, <http://www.mochiefcounsel.org/ocdc.htm?id=9&cat=2>, (last visited Feb. 6, 2010).

366. *Id.*

367. *Id.*

or profession to fall into disrepute, and has not committed acts warranting disbarment.³⁶⁸

The Missouri Supreme Court has ruled that any act of misappropriation is generally grounds for disbarment.³⁶⁹ Additionally, the Court has imposed an automatic suspension for failure to pay taxes, since the willful failure to pay taxes reflects adversely on an attorney's fitness to practice law.³⁷⁰

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently extremely low. In recent years, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 5% to 9%, down from the slightly higher percentages in earlier years reported.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	24346	24889	25373	25844	26344	26883	25206	28076	28711	29343	29095
Complaints Received ³⁷¹	1768	1631	1786	1822	2002	2529	2493	2410	2394	2359	2362
Complaints Investigated	941	971	1656	1443	1417	1676	1610	1584	1419	1240	1238
Num. Formal Charges	35	58	40	29	26	40	40	32	34	47	43
Percentage of Formal Charges Compared with Complaints	2%	4%	2%	2%	1%	2%	2%	1%	1%	2%	2%
Total Number of Disciplines Imposed ³⁷²	256	253	247	214	175	202	162	181	119	130	120
Percentage of Disciplines Imposed Compared to Complaints Recd	14%	16%	14%	12%	9%	8%	6%	8%	5%	6%	5%

MONTANA

The Montana Supreme Court has set up two offices to regulate attorney discipline.³⁷³ The system consists of The Office of Disciplinary Coun-

368. Schaeperkoetter, Carls, "Probation - The Process in Missouri," <http://www.mochiefcounsel.org/articles/2009aug.pdf>, (last visited Feb. 6, 2010).

369. Briesacher, Shamon L., "You're Suspended: Do No Pass 'Go', Do Not Collect \$200," <http://www.mochiefcounsel.org/articles/2009may.pdf>, (last visited Feb. 6, 2010).

370. *Id.*

371. Includes matters handled by central intake.

372. The Total Number Disciplines in Missouri does not include admonitions, which are public only 3 years.

373. The Office of Disciplinary Counsel for the State of Montana, <http://www.montanaodc.org/> (follow "Frequently Asked Questions" hyperlink).

sel (ODC) and the Commission on Practice (COP).³⁷⁴ ODC performs central intake functions and processes, investigates and prosecutes complaints against lawyers that are within the jurisdiction of the Court.³⁷⁵ COP hears and decides the complaints and makes recommendations to the Court for discipline if the rules have been violated.³⁷⁶ COP and ODC are under the direct supervision of the Montana Supreme Court.³⁷⁷

When a complaint is received, it is reviewed by the Disciplinary Counsel to determine if a violation of the Rules of Professional Conduct is stated.³⁷⁸ ODC has the authority to investigate all matters involving possible misconduct, all matters involving possible disability, prosecution of disciplinary and disability proceedings, and overdraft notifications of escrow accounts.³⁷⁹

If an investigation is initiated, the attorney will receive a copy of the complaint and is required to respond in writing to the allegations.³⁸⁰ If the investigation establishes that a violation has occurred, the attorney may receive informal private discipline or, in some cases, formal charges may be filed with the Court.³⁸¹ The discipline ordered after the filing of formal charges can range from public censure to disbarment.³⁸² COP can also recommend that the lawyer be required to make restitution of client's funds that may have been misappropriated.³⁸³ COP may dismiss a complaint if the complaint, the attorney's response, and the complaining party's response do not indicate that a violation of the rules has occurred.³⁸⁴

It is professional misconduct for a lawyer to:³⁸⁵

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

380. The Office of Disciplinary Counsel for the State of Montana, <http://www.montanaodc.org/> (follow "Frequently Asked Questions" hyperlink).

381. *Id.*

382. *Id.*

383. *Id.*

384. *Id.*

385. MT R. Rules of Prof. Conduct R. 8.4.

- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable code of judicial conduct or other law.

Discipline may also be imposed for any of the following reasons:³⁸⁶

- (1) Acts or omissions by a lawyer, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct or the disciplinary rules adopted from time to time by the Supreme Court.
- (2) Any act committed by an attorney contrary to the highest standards of honesty, justice or morality, including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated, whether committed in such attorney's capacity as an attorney or otherwise.
- (3) Conduct which results in conviction of a criminal offense.
- (4) Conduct which results in lawyer discipline in another jurisdiction.
- (5) Violation of the terms of any discipline or disciplinary order.
- (6) Failure to promptly and fully respond to an inquiry from Disciplinary Counsel, an investigator, or the Commission, or failure to justify such refusal or nonresponse.
- (7) Willful contempt of court and failure to purge the contempt.

COP may conclude that further investigation and the holding of a hearing are not justified in certain cases.³⁸⁷ In cases where the complaint is

386. MT R. Lawyer Disciplinary Enforcement R. 8.

387. The Office of Disciplinary Counsel for the State of Montana, <http://www.montanaodc.org/> (follow "Frequently Asked Questions" hyperlink).

not dismissed and where it appears that a rules violation has occurred, the misconduct of the lawyer involved must be established either by clear and convincing evidence presented at a hearing conducted by COP, or by the admission of the lawyer involved.³⁸⁸ Only then can COP make its recommendations to the Supreme Court.³⁸⁹ The following factors are considered in determining discipline to be recommended or imposed: the duty violated; the lawyer's mental state; the actual or potential injury caused by the lawyer's misconduct; and the existence of aggravating or mitigating factors.³⁹⁰

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed when available has ranged from a low of 3% up to the most recent figure of 11%. The percentage of actual disciplines imposed compared with number of charges filed has varied more widely, ranging from a low of 6% to a high of 40%.

388. *Id.*
389. *Id.*
390. *Id.*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	n/a	n/a	n/a	3110	5701	2600	3146	3254	3287	3402	3400
Complaints Received	n/a	n/a	n/a	205	252	320	471	429	371	379	324
Complaints Investigated	n/a	n/a	n/a	51	101	296	394	393	455	484	308
Num. Formal Charges	n/a	n/a	n/a	7	22	12	19	20	34	41	24
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	3%	9%	4%	4%	5%	9%	7%	11%
Total Number of Disciplines Imposed	n/a	n/a	n/a	82	16	60	69	89	51	58	31
Percentage of Disciplines Imposed Compared to Complaints Recd	n/a	n/a	n/a	40%	6%	19%	15%	21%	14%	15%	10%

NEBRASKA

The Nebraska Supreme Court has assigned the office of Counsel for Discipline to investigate and prosecute violations of the Rules of Professional Conduct.³⁹¹ The Counsel for Discipline has a paid staff of attorneys that investigate and prosecute grievances against attorneys admitted to the practice of law in Nebraska.³⁹² Members of the six Committees on Inquiry and the Disciplinary Review Board are appointed by the Nebraska Supreme Court and serve on a volunteer basis.³⁹³ One third of the members of the Committees on Inquiry and Disciplinary Review Board are non-lawyers.³⁹⁴

If a grievance is proper, the attorney is asked to file a written response.³⁹⁵ The staff will then investigate the allegations.³⁹⁶ When the investigation is completed, the grievance will be dismissed or charges will be filed against the attorney with the appropriate Committee on Inquiry.³⁹⁷ If charges are brought, they must be proved by clear and convincing evidence.³⁹⁸

It is professional misconduct for a lawyer to:³⁹⁹

391. Nebraska Judicial Branch, <http://www.supremecourt.ne.gov> (follow "Professional Ethics" hyperlink, then "Professional Ethics for Lawyers" then follow "How to file a grievance" hyperlink).
392. *Id.*
393. *Id.*
394. *Id.*
395. *Id.*
396. *Id.*
397. Nebraska Judicial Branch, <http://www.supremecourt.ne.gov> (follow "Professional Ethics" hyperlink, then "Professional Ethics for Lawyers" then follow "How to file a grievance" hyperlink).
398. *Id.*
399. Neb. Ct. R. Prof. Cond. §3-508.4.

- (a) Violate or attempt to violate the Rules of Professional Conduct knowingly assist or induce another to do so or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.
- (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law or
- (g) Willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.

The following are additional grounds for discipline per the rules of the Nebraska Supreme Court.⁴⁰⁰

- (A) The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of the conditional privilege to practice law to conduct himself or herself at all times, both professionally and

400. Neb. Ct. R. Prof. Cond. §3-303.

personally, in conformity with the standards imposed upon members as conditions for that privilege.

(B) Acts or omissions by a member, individually or in concert with any other person or persons, which violate the Nebraska Rules of Professional Conduct as adopted by the Court, the oath, or the provisions of these rules, shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise.

The percentage of formal charges as compared with the active attorney population has remained at 1%. The percentage of formal charges compared with complaints filed has also been fairly constant, ranging from 7% to 12% and staying at 9% the past several years. The percentage of actual disciplines imposed compared with number of charges filed has remained slightly higher, ranging from 9% to 18%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	5937	5840	6046	5889	6016	5983	6097	6188	5939	6381	6456
Complaints Received	522	492	516	487	548	525	597	566	522	544	411
Complaints Investigated	n/a	n/a	431	380	405	384	405	394	346	375	271
Num. Formal Charges	62	52	47	33	47	46	52	40	33	48	39
Percentage of Formal Charges Compared with Complaints	12%	11%	9%	7%	9%	9%	9%	7%	9%	9%	9%
Total Number of Disciplines Imposed	49	50	91	56	52	46	83	58	59	56	65
Percentage of Disciplines Imposed Compared to Complaints Recd	9%	10%	18%	12%	9%	9%	14%	10%	11%	10%	16%

NEVADA

The Office of Bar Counsel has the authority to discipline attorneys for violation of the Nevada Rules of Professional Conduct as established by the Nevada Supreme Court.⁴⁰¹ There is no special language or form necessary to begin an investigation against an attorney.⁴⁰² If a complainant feels an attorney has acted in a manner that violates an issue under the Rules of Professional conduct the complainant should write a letter to the State Bar stating the facts of the grievance or submit an online form.⁴⁰³ The Counsel will then review the complaint and determine whether or not the conduct raises an ethical issue.⁴⁰⁴ If the Counsel determines that the complaint war-

401. State Bar Ethics Discussion, http://www.nvbar.org/ethics_overview.html.

402. *Id.*

403. *Id.*

404. *Id.*

rants further investigation, the attorney involved is then instructed to give a written response within ten days of the complaint.⁴⁰⁵ After evaluating the attorney's response, the Bar Counsel then gives the complainant the opportunity to respond to the attorney's explanation.⁴⁰⁶ An impartial panel then determines whether the case should be sent to the Disciplinary Board.⁴⁰⁷

Once a complaint is sent to the Disciplinary Board the Board decides if the attorney has engaged in misconduct. The Nevada Rules of Professional Conduct lists the conduct that would warrant sanctions:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

If any of the above rules are broken the Board could issue one of the following four forms of sanctions:

- 1) A private reprimand which is also kept on file at the State Bar;
- 2) A public reprimand which is published in the local newspapers and official State Bar publications;
- 3) Suspension of the lawyer's license to practice law for up to five years; or

405. How to file a Complaint Against an Attorney, http://www.nvbar.org/ethics/file_a_complaint.html.
 406. *Id.*
 407. *Id.*

4) Disbarment⁴⁰⁸

There are two Disciplinary Boards, one in the northern district and one in the southern district.⁴⁰⁹ Each Board consists of at least thirty-five members of the bar of Nevada and at least twelve non-lawyers.⁴¹⁰ The Board has discretion as to which type of sanction to impose and uses the American Bar Association's criteria to determine the appropriate sanction.⁴¹¹ The ABA suggests an analysis of four factors to be considered: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors."⁴¹²

The percentage of formal charges, as compared with the active attorney population, has remained at 1%. The percentage of formal charges compared with complaints filed has also been consistently low when reported. Similarly, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 3% to 9%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	4613	5020	4993	5462	5609	5986	6321	6321	6969	7463	7739
Complaints Received	1348	1232	1140	955	1240	1257	1173	1362	1388	1614	1701
Complaints Investigated ⁴¹³	n/a	n/a	249	169	216	1157	1056	1226	1249	1453	1531
Num. Formal Charges	n/a	n/a	n/a	n/a	n/a	n/a	27	16	18	17	18
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	n/a	n/a	n/a	2%	1%	1%	1%	1%
Total Number of Disciplines Imposed	n/a	n/a	70	45	82	111	82	92	83	44	72
Percentage of Disciplines Imposed Compared to Complaints Received	n/a	n/a	6%	5%	7%	9%	7%	7%	6%	3%	4%

NEW HAMPSHIRE

The New Hampshire Supreme Court's Attorney Discipline System has the authority to discipline attorneys for ethical violations of the New Hampshire Rules of Professional Conduct.⁴¹⁴ The system is composed of the Attorney Discipline Office, a Complaint Screening Committee, Hearings Committee and Professional Conduct Committee.⁴¹⁵

408. State Bar Ethics Discussion, http://www.nvbar.org/ethics/ethics_overview.htm.
 409. *Id.*
 410. *Id.*
 411. *In re Discipline of Lerner*, 197 P.3d 1067, (Nev. 2008).
 412. *Id.*
 413. In Nevada, the "complaints investigated" includes matters where files were not opened.
 414. New Hampshire Attorney Misconduct, www.nhbar.org/for-the-public/AttorneyMisconduct.asp.
 415. Attorney Discipline System, www.courts.state.nh.us/committees/attydiscip/index.htm.

If a complainant believes an attorney has acted in a manner that violates the Rules of Professional conduct the complainant must file a grievance in writing with the Attorney Discipline Office.⁴¹⁶ The grievance must include concise facts, that if true, would establish a violation of the Rules of Professional Conduct and be sworn before a Notary or Justice of the Peace.⁴¹⁷ The signature of the person filing the complaint along with the language: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge" must be included on the grievance.⁴¹⁸ Additionally, the conduct must have occurred within the past two years, and the person complaining must be directly affected by the conduct or be present when the conduct occurs.⁴¹⁹

The New Hampshire Rules of Professional Conduct lists the conduct that would warrant a violation:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) state or imply an ability to influence improperly a government agency or official;
- (e) state or imply an ability to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.⁴²⁰

Once a complaint is filed, the Attorney Discipline Office evaluates, processes, and prepares a report for the Screening Committee.⁴²¹ The report is then submitted to the members of the screening committee which

416. New Hampshire Attorney Misconduct, www.nhbar.org/for-the-public/AttorneyMisconduct.asp.

417. *Id.*

418. *Id.*

419. *Id.*

420. NEW HAMPSHIRE RULES OF PROF'L CONDUCT, R. 8.4 (2008).

421. Order from the Supreme Court of New Hampshire, <http://www.courts.state.nh.us/supreme/orders/20030827rules.htm>.

consists of five lawyers and four non-lawyers.⁴²² The Screening Committee will then take one of the following actions:

- Table the matter and direct General Counsel to obtain further information;
- Dismiss the complaint with a finding of no professional misconduct, or dismiss for any other basis with or without warning;
- Offer diversion to the respondent-attorney as an alternative to discipline for minor misconduct;
- Determine that a hearing is necessary and refer the matter to the Disciplinary counsel to prepare for a hearing before the panel of the Hearings Committee.⁴²³

If a complaint is sent to the Hearings Committee, a Hearings panel is selected.⁴²⁴ Of the thirty-four members of the Hearings Committee three to five get selected to serve on a hearing panel.⁴²⁵ The hearing panel must write a written report, make findings of fact and conclusions, and recommend that the Professional Conduct Committee either:

- Issue a disciplinary sanction, or make findings of misconduct and recommend sanctions, or,
- Dismiss the complaint with findings of no professional misconduct, with or without a warning.⁴²⁶

At that point the twelve member Professional Conduct Committee will consider the Hearing Panel reports and memoranda and determine if there is clear and convincing evidence of a violation of the rules and take one of the following actions:

- Dismiss complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six months;

422. Order from the Supreme Court of New Hampshire, <http://www.courts.state.nh.us/supreme/orders/20030827rules.htm>.

423. Order from the Supreme Court of New Hampshire, *supra* note 422.

424. *Id.*

425. *Id.*

426. Order from the Supreme Court of New Hampshire, <http://www.courts.state.nh.us/supreme/orders/20030827rules.htm>.

- Attach appropriate conditions to any discipline it imposes;
- Offer diversion to respondent-attorneys if appropriate;
- Direct disciplinary counsel to file a petition in the New Hampshire Supreme Court on all matters in which the Committee decides that the appropriate sanction should be disbarment or suspension of more than six months;
- Where appropriate, assess to a disciplined respondent-attorney expenses incurred by the Attorney Discipline System in the investigation and enforcement of discipline.⁴²⁷

The Hearing panel looks to the level of the alleged misconduct to determine the appropriate action.⁴²⁸ The New Hampshire Rules and Procedures of the Attorney Discipline System defines minor misconduct as:

"Minor Misconduct: Conduct, which if proved, violates the rules of professional conduct but would not warrant discipline greater than a reprimand. Minor misconduct (1) does not involve the misappropriation of client funds or property; (2) does not, nor is likely to, result in actual loss to a client or other person of money, legal rights or valuable property rights; (3) is not committed within five (5) years of a diversion, reprimand, censure, suspension or disbarment of the attorney for prior misconduct of the same nature; (4) does not involve fraud, dishonesty, deceit or misrepresentation; (5) does not constitute the commission of a serious crime as defined in Rule 37(9)(b); and (6) is not part of a pattern of similar misconduct."⁴²⁹

Rule 37 (9) (b) defines a serious crime as:

(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

427. New Hampshire Supreme Court Attorney Discipline System, <http://nhattyreg.org/conduct.php> (last updated Jan. 25 2011).

428. Order from the Supreme Court of New Hampshire, *supra* note 422.

429. New Hampshire Rules and Procedures of the Attorney Discipline System 37A.

Additionally, New Hampshire has another method for resolving disputes between attorneys and clients.⁴³⁰ The New Hampshire Dispute Resolution Committee offers assistance when a dispute between an attorney and client does not rise to the level of an ethical violation.⁴³¹ Examples of these types of disputes include: where an attorney is not returning phone calls, not keeping the client informed, making excuses for the length of the case, or when an attorney will not relinquish a client's file upon being dismissed.⁴³²

The percentage of formal charges, as compared with the active attorney population, has ranged from less than 1% to 3%. The percentage of formal charges compared with complaints filed has remained higher than other states, ranging from a low of 8% up to a high of 60%. In addition, the percentage of actual disciplines imposed compared with number of charges filed has varied as well, ranging from 7% to 40%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	3924	3973	3926	4008	4061	4066	3900	4241	n/a	4531	4783
Complaints Received	395	366	302	261	196	191	169	235	n/a	134	276
Complaints Investigated	168	131	132	312	238	252	318	169	n/a	178	215
Num. Formal Charges	38	41	26	41	31	28	102	26	n/a	21	23
Percentage of Formal Charges Compared with Complaints	10%	11%	9%	16%	16%	15%	60%	11%	n/a	16%	8%
Total Number of Disciplines Imposed	27	30	35	44	30	42	25	37	n/a	54	49
Percentage of Disciplines Imposed Compared to Complaints Received	7%	8%	12%	17%	15%	22%	15%	16%	n/a	40%	18%

NEW JERSEY

The Supreme Court of New Jersey established the Office of Attorney Ethics to manage all the district ethics and fee arbitration committees throughout the state.⁴³³ Currently, there are seventeen district ethics committees, which handle the ethical complaints about attorneys located in their respective district.⁴³⁴ The Office of Attorney Ethics has the jurisdiction to investigate and prosecute ethical matters in violation of the New Jersey Rules of Professional Conduct.⁴³⁵

430. NEW HAMPSHIRE RULES & PROCEDURE OF THE ATT'Y DISCIPLINE SYSTEM R. 37A (2008).

431. *Id.*

432. *Id.*

433. Office of Attorney Ethics, http://www.judiciary.state.nj.us/oae/atty_disc/atty_disc.htm.

434. *Id.*

435. *Id.*

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional Conduct a written grievance must be filed with the secretary of the district ethics committee for the district in which the lawyer has his or her main law office.⁴³⁶ An Attorney Grievance Form must include sufficient detail about the facts of the grievance.⁴³⁷ This includes all relevant names, addresses, and copies of any important documents.⁴³⁸

If a complainant has a dispute with an attorney regarding fees, the complainant has the option to go through the arbitration system instead of the traditional grievance system.⁴³⁹ The New Jersey Court Rules require that in order for a fee dispute to be considered by the ethics committee it must first go through fee arbitration.⁴⁴⁰

New Jersey has adopted the ABA Model Rules of Professional Conduct which lists the conduct that would warrant a violation under Rule 8.4 Misconduct:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;
- (g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, re-

436. *Id.*

437. *Id.*

438. *Id.*

439. Office of Attorney Ethics, http://www.judiciary.state.nj.us/oe/atty_disc/atty_disc.htm.

440. Office of Attorney Ethics, www.judiciary.state.nj.us/oe/atty_disc/att_disc.html.

ligion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.⁴⁴¹

Once a complaint is filed, the secretary of the ethics committee reviews the form and determines if the facts alleged about the conduct of the lawyer, if proven, would be unethical.⁴⁴² If the facts alleged would be unethical, the secretary docket the case and assigns the matter to a lawyer-member for investigation to determine the validity of the claim.⁴⁴³ A written report of investigation is then submitted to the Chair of the committee who then determines if there is a reasonable prospect of proving unethical conduct by clear and convincing evidence.⁴⁴⁴ If this standard has been met, the hearing process then begins.⁴⁴⁵

The hearing panel consists of three members, two lawyers and one non-lawyer.⁴⁴⁶ After a hearing on the grievance takes place, the panel takes one of the following actions:

- Dismiss the complaint, if it finds that the lawyer has not committed misconduct, or
- Determines that the lawyer has been guilty of unethical conduct for which discipline i.e.,
 - 1) Admonition;
 - 2) Reprimand;
 - 3) Censure;
 - 4) Suspension; or
 - 5) Disbarment is required.⁴⁴⁷

The circumstances and severity of the offense determines the form of discipline an attorney receives.⁴⁴⁸

441. NEW JERSEY RULES OF PROF'L CONDUCT, R. 8.4 (2004).

442. Office of Attorney Ethics, Investigations, http://www.judiciary.state.nj.us/oe/atty_dis/atty_disc.htm.

443. *Id.*

444. *Id.*

445. *Id.*

446. *Id.*

447. Office of Attorney Ethics, Investigations, *supra* note 442.

448. Office of Attorney Ethics, Forms of Discipline, Office of Attorney Ethics, Investigations, http://www.judiciary.state.nj.us/oe/atty_disc/atty_disc.htm.

Rule 1:20(i)(2) Determination of Unethical Conduct defines Minor Unethical Conduct as:

(A) Defined. Minor unethical conduct, is conduct, which, if proved, would not warrant a sanction greater than a public admonition. Unethical conduct shall not be considered minor if any of the following considerations apply:

- (i) the unethical conduct involves the knowing misappropriation of funds;
- (ii) the unethical conduct resulted in or is likely to result in substantial prejudice to a client or other person and restitution has not been made;
- (iii) the respondent has been disciplined in the previous five years,
- (iv) the unethical conduct involves dishonesty, fraud, or deceit;
- (v) or the unethical conduct constitutes a crime as defined by the New Jersey Code of Criminal Justice. Classification of unethical conduct as minor unethical conduct shall be in the sole discretion of the Director.

If a complaint is dismissed by the committee the complainant has the right to appeal the decision.⁴⁴⁹ A Disciplinary Review Board will review the recommendation from the committee and the hearing panel and determine the appropriate action.⁴⁵⁰ Only the Supreme Court has the authority to disbar an attorney.⁴⁵¹

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has not consistently been reported. But when this comparison has been reported, it has varied dramatically between 3% and 14%. The percentage of actual disciplines imposed compared with number of charges filed has been more consistently reported and for years remained fairly constantly low, but in recent years has made a jump, from averaging around 4% up to the most recent year's 25%.

449. Office of Attorney Ethics, Hearings and Review, Office of Attorney Ethics, Investigations, http://www.judiciary.state.nj.us/oe/atty_disc/atty_disc.htm.

450. *Id.*

451. *Id.*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	67840	70264	72738	56278	56446	57583	59919	61360	77434	81684	67181
Complaints Received	7300	6470	5280	6650	7360	6800	6052	7370	7145	1553	1394
Complaints Investigated	2784	2579	2518	1276	2741	3017	2717	1474	1553	1494	1500
Num. Formal Charges	n/a	n/a	n/a	n/a	n/a	n/a	n/a	226	241	219	189
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	n/a	n/a	n/a	n/a	3%	3%	14%	14%
Total Number of Disciplines Imposed	203	478	437	344	267	424	354	330	286	276	354
Percentage of Disciplines Imposed Compared to Complaints Recd	3%	7%	8%	5%	3%	6%	6%	4%	4%	18%	25%

NEW MEXICO

The Supreme Court of New Mexico has adopted the Rules of Professional Conduct, which establish high standards of ethics and professional competence for lawyers who practice in New Mexico, and has established an agency known as the Disciplinary Board to enforce them.⁴⁵² The Office of Disciplinary Counsel is the investigative body for the Disciplinary Board.⁴⁵³ Through this Board, the Office of Disciplinary Counsel looks into complaints about attorneys licensed to practice law in New Mexico to determine whether the attorneys have violated the Rules of Professional Conduct.⁴⁵⁴

After a complaint is received, it is investigated by the ODC.⁴⁵⁵ A copy of the complaint is sent to the attorney and a response is requested.⁴⁵⁶ If the investigation of a complaint reveals insufficient evidence to prove misconduct, the complaint will be dismissed.⁴⁵⁷ In cases where there is evidence of more serious ethical violations or when the attorney fails to respond to the complaint, formal disciplinary charges are filed.⁴⁵⁸ When charges are filed, a hearing committee is appointed.⁴⁵⁹ The hearing committee is usually comprised of two attorneys and one non-attorney.⁴⁶⁰ After

452. Standards of Professional Conduct, <http://www.nmbar.org/Public/complaintsagainlawyers.html>.

453. Home, <http://www.nmdisboard.org/>.

454. *Id.*

455. Disciplinary Process, <http://www.nmdisboard.org/DisciplinaryProcess.htm>.

456. *Id.*

457. *Id.*

458. *Id.*

459. *Id.*

460. Disciplinary Process, *supra* note 455.

the hearing, the hearing committee makes findings of fact, conclusions of law, and a recommendation regarding what discipline, if any, is appropriate.⁴⁶¹ After the hearing committee makes its recommendation, a panel of disciplinary board members is appointed to review the record of the proceeding and to accept or reject the hearing committee's findings and recommendation.⁴⁶² Once the board panel has reviewed the record and made its ruling on the hearing committee's recommendation, the matter is forwarded to the Supreme Court of New Mexico.⁴⁶³ The Supreme Court has ultimate authority over the discipline imposed and may accept, reject, or modify the Disciplinary Board's recommendation.⁴⁶⁴

It is professional misconduct for a lawyer to:

- A. violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another;
- B. commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- C. engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- D. engage in conduct that is prejudicial to the administration of justice;
- E. state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- F. knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.⁴⁶⁵

The Disciplinary Board may impose five different types of sanctions against an attorney:

1. The Chief Disciplinary Counsel may issue a non-public informal admonition informing the lawyer that the Disciplinary Board has determined that his conduct was improper and warning him to

461. *Id.*

462. *Id.*

463. *Id.*

464. *Id.*

465. 16-804 Misconduct, <http://search.nmcompcomm.us/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>.

see that such conduct does not recur. Although the informal admonition is not announced to the public, the complainant is informed of the disposition of his complaint.⁴⁶⁶

2. The Disciplinary Board may issue a public formal reprimand to the attorney.
3. The Supreme Court may publicly censure the attorney.
4. The Supreme Court may prohibit the attorney from working as an attorney for a certain period of time. This is called a suspension.
5. The Supreme Court may revoke an attorney's license to practice law. This is called disbarment.⁴⁶⁷

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed has also been consistently low. With the exception of a single year, the percentage of imposed disciplines compared with number of charges filed has also remained fairly constant, ranging from 5% to 12%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	4008	5540	5622	5646	5706	5706	7581	6045	6013	6365	6727
Complaints Received	894	843	634	667	616	597	527	522	513	484	592
Complaints Investigated	1098	1100	693	720	789	555	318	77	27	61	555
Num. Formal Charges	12	23	26	31	15	14	102	14	11	18	28
Percentage of Formal Charges Compared with Complaints	1%	3%	4%	5%	2%	2%	19%	3%	2%	4%	5%
Total Number of Disciplines Imposed	60	71	74	70	44	37	43	28	36	35	45
Percentage of Disciplines Imposed Compared to Complaints Received	7%	8%	12%	10%	7%	6%	8%	5%	7%	7%	8%

NEW YORK

In New York, authority over the conduct of attorneys rests with the appellate division of the New York Supreme Court and the discipline and grievance committees appointed by that court.⁴⁶⁸ The committees are made

466. Letters of caution are not sanctions and they do not denote a finding of any violation of the Rules of Professional Conduct. *See infra* note 467.

467. Types of Discipline, <http://www.nmbar.org/Public/complaintsagainlawyers.html>.

468. New York statistics consist of New York's 1st judicial department, 2nd judicial department (2nd, 9th, 10th and 11th Districts), 3rd judicial departments, and 4th judicial department (5th, 7th and 8th

up of both attorneys and non-attorneys, working with a court-appointed, state financed, full-time professional staff.⁴⁶⁹ Each committee investigates the complaints received by it or, in some cases, refers the complaint to a county bar association for resolution.⁴⁷⁰

The New York court structure is divided into four departments. Each department has the authority to regulate professional responsibility, divided by regional committees.⁴⁷¹ Complaints must be made to the grievance committee that regulates the county in which the attorney's office is located.⁴⁷²

A complaint may be filed by submitting a signed, written statement giving a concise statement of the facts and circumstances of the alleged misconduct.⁴⁷³ The claimant must file this complaint with the grievance committee that presides over the geographical area the attorney's office is located in.⁴⁷⁴ A complaint cannot be made anonymously, it must be signed and provide an address and telephone number at which the complainant can be reached.⁴⁷⁵

Every complaint is initially reviewed by an attorney on the Committee staff.⁴⁷⁶ If it is determined that the complaint involves a matter falling outside the Committee's authority, the staff will notify the complainant that the complaint is being rejected.⁴⁷⁷ However, if the initial screening reveals that the complaint is within the Committee's authority and may involve an ethical violation, the legal staff will carry out an initial investigation of the case.⁴⁷⁸ If the investigation reveals that the lawyer did not violate a specific rule in the Rules, or if it appears that the complaint cannot be proven, the Committee may decide that the complaint should be dismissed.⁴⁷⁹ Before a complaint is dismissed, however, the staff recommendation, as well

districts). Attorney discipline is controlled by the Appellate Divisions of the State Supreme Court. <http://www.op.nysed.gov/opd.htm#attorneys> (last visited May 20, 2008). See also New York State Bar Association, <http://www.nysba.org> (follow "For the Community" hyperlink; then follow "Resolving Conflict with a New York Attorney?" hyperlink) (last visited Sept. 4, 2009).

469. New York State Bar Association, <http://www.nysba.org> (follow "For the Community" hyperlink; then follow "Resolving Conflict with a New York Attorney?" hyperlink) (last visited Sept. 4, 2009).

470. *Id.*

471. *Id.*

472. *Id.*

473. New York State Supreme Court Appellate Division First Department, Departmental Disciplinary Committee, <http://www.courts.state.ny.us/courts/ad1/Committees&Programs/DDC/index.shtml>, (last visited Sept. 4, 2009).

474. New York State Supreme Court Appellate Division First Department, Departmental Disciplinary Committee, *supra* note 473.

475. *Id.*

476. *Id.*

477. *Id.*

478. *Id.*

479. Appellate Division Second Department, Attorney Matters, How to Make a Complaint About an Attorney, http://www.courts.state.ny.us/courts/ad2/attorney_matters_ComplaintAboutaLawyer.shtml (last visited Sept. 4, 2009).

as the entire file, will be reviewed by the chief counsel and again independently by at least one committee member.⁴⁸⁰ If the review affirms the dismissal, the complainant will be notified in writing that the complaint is to be dismissed.⁴⁸¹

In some cases that do not involve serious ethical violations and are unlikely to result in a disciplinary sanction against a lawyer, the committee may decide to send the complaint to mediation. The relevant provision provides that "[i]f the staff attorney after second screening recommends that it is likely that there has been a violation of a Disciplinary Rule, that recommendation is reviewed by the Chief Counsel or the First Deputy Chief Counsel and if the recommendation is accepted, the case is assigned to one of the staff attorneys to conduct further investigation which may require issuing subpoenas for documents and records as well as interviewing witnesses including at times the complainant as well as the attorney whose conduct is being investigated."⁴⁸²

There are two forms of sanctions imposed by the Appellate Division, a private reprimand and a public reprimand.⁴⁸³ A letter of admonition is a private reprimand that is sent out to attorneys that have behaved unethically and deserve discipline, but the violation is not serious enough to warrant a formal public discipline.⁴⁸⁴ The letter is sent out to first time offenders for minor offenses.⁴⁸⁵

In a case involving an allegation of serious unethical conduct that can be proven, or a case against a lawyer having a history of other repeated provable offenses, it may be determined that formal charges should be brought against the lawyer. Formal charges are initially prepared by the legal staff, and require the approval of at least two policy committee members.⁴⁸⁶ If formal charges are brought against a lawyer, the court will appoint a referee to conduct the hearing.⁴⁸⁷ Staff attorneys prosecute the case against the offending lawyer before a referee.⁴⁸⁸ After the hearing, which is similar to a formal trial, the referee issues a report and recommendation as to whether the charges have been proven and recommends an appropriate sanction.⁴⁸⁹ The entire proceeding is then reviewed by a hearing panel

480. New York Supreme Court Appellate Division First Department, *supra* note 473.

481. *Id.*

482. New York Supreme Court Appellate Division First Department, Departmental Disciplinary Committee, *supra* note 473.

483. *Id.*

484. *Id.*

485. *Id.*

486. *Id.*

487. New York Supreme Court Appellate Division First Department, Departmental Disciplinary Committee, *supra* note 473.

488. *Id.*

489. *Id.*

assigned by the chairman of the committee.⁴⁹⁰ If the hearing panel finds that the charges have been proven, then its report, determination as to sanction, and all of the information regarding the case is sent to the court.⁴⁹¹ The court, after its review, may confirm, reject, or modify the referee's findings and/or the hearing panel's recommendation.⁴⁹² Only the court has the authority to impose public discipline on the lawyer, including censure, suspension, or disbarment.⁴⁹³

The court decides which sanction to impose based on the severity of the infraction, taking into account mitigating circumstances.⁴⁹⁴ It is impossible to determine what specific activity will bring about a certain sanction.⁴⁹⁵ Even intentionally breaking the rules can lead to only a censure if sufficient mitigating factors are present.⁴⁹⁶ However, when an accused attorney acts intentionally, does not correct his actions, and disregards the disciplinary procedures the court may disbar him.⁴⁹⁷

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. In addition, the percentage of actual disciplines imposed compared with number of charges filed has remained very constant, ranging from 6% to 11%.

490. *Id.*

491. *Id.*

492. New York Supreme Court Appellate Division First Department, Departmental Disciplinary Committee, *supra* note 473.

493. *Id.*

494. New York State Bar Association, *supra* note 468.

495. *Id.*

496. *In re Banac*, 43 A.D. 3d 170 (N.Y. App. Div. 2007). See *In re O'Connell*, 59 A.D. 3d 126 (N.Y. App. Div. 2008) (disciplined attorney acted knowingly; however, he voluntarily participated in mitigation, remedied the infraction, and worked with the disciplinary committee, accordingly he was only censured).

497. *In re Barry*, 47 A.D. 3d 288 (N.Y. App. Div. 2007).

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	88458	112458	122484	121856	135539	139870	139870	144465	146916	158087	153918
Complaints Received	14239	14079	12888	13317	13864	14801	13641	14882	14486	13004	14498
Complaints Investigated	13367	12910	11179	10470	13154	13344	11876	10845	10282	8710	8731
Num. Formal Charges	254	293	421	308	320	324	394	380	450	508	762
Percentage of Formal Charges Compared with Complaints	2%	2%	3%	2%	2%	2%	3%	3%	3%	4%	5%
Total Number of Disciplines Imposed	1532	1454	1414	1287	1270	1167	1281	1084	882	880	1199
Percentage of Disciplines Imposed Compared to Complaints Recd	11%	10%	11%	10%	9%	8%	9%	7%	6%	7%	8%

NORTH CAROLINA

In North Carolina, a grievance may be filed "by any person against a member of the North Carolina State Bar."⁴⁹⁸ The complaint may be written or oral, verified or unverified, so long as it is instituted within six years from the start of the offense.⁴⁹⁹ To determine if a complaint is founded, North Carolina has two separate and distinct ways to discipline their attorneys. First, North Carolina monitors its attorneys by using The Council of the North Carolina State Bar, who has control of the discipline, disbarment, and restoration of attorneys.⁵⁰⁰ The Council appoints members of the Grievance Committee (the commission) and appoints a member of the North Carolina Bar to act as Bar Counsel.⁵⁰¹ The second way to discipline attorneys in North Carolina is through the inherent authority of the courts to take disciplinary action.⁵⁰²

Either the Bar Council or the Grievance Committee directs the Bar Counsel to investigate the allegations of the complaint.⁵⁰³ The Grievance Committee is given the task of determining whether or not probable cause

498. North Carolina Administrative Rules of the State Bar, <http://www.ncbar.gov/rules/regulations.asp?page=70> (last visited November 16, 2010).

499. *Id.*

500. *Id.*

501. North Carolina Administrative Rules of the State Bar, <http://www.ncbar.gov/rules/regulations.asp?page=71> (last visited November 16, 2010).

502. *Id.*

503. *Id.*

exists which would denote misconduct justifying disciplinary action.⁵⁰⁴ A hearing is conducted where an existence of probable cause must be found by a majority of the members present in order to warrant disciplinary action.⁵⁰⁵

The Grievance Committee is also responsible for recommending actions against attorneys for misconduct. The possible sanctions include letters of warning, admonitions, reprimands, censures, and suspension. If it is determined by the Grievance Committee that the conduct of the respondent is an unintentional, minor, or technical violation of the Rules of Professional Conduct, the committee may issue a letter of warning.⁵⁰⁶ If probable cause⁵⁰⁷ is found, but it is determined that a hearing is not warranted, the committee may issue an admonition⁵⁰⁸ or a reprimand.⁵⁰⁹ Whether an admonition or a reprimand is recommended depends upon the seriousness of the violation of the Rules of Professional Conduct. If probable cause is found and the Grievance Committee has determined that a violation of the Rules of Professional Conduct has occurred and the defendant has caused significant harm to a client, but the conduct does not require suspension of his license, the committee will issue a proposed censure⁵¹⁰ to the defendant.⁵¹¹

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. With the exception of one year, the percentage of imposed disciplines compared with number of charges filed has remained fairly higher, ranging from 9% to 20%.

504. *Id.*

505. North Carolina Administrative Rules of the State Bar, *supra* note 499.

506. *Id.*

507. *Id.* Probable Cause being defined as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action." North Carolina Administrative Rules of the State Bar, <http://www.ncbar.gov/rules/regulations.asp?page=72> (last visited November 16, 2010).

508. *Id.* Admonition being defined as a "written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct."

509. *Id.* Reprimand being defined as "a written form of discipline more serious than an admonition issued in cases in which a defendant has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure."

510. *Id.* Censure being defined as "a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require suspension of the attorney's license."

511. *Id.*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	16625	17251	17660	18673	19114	19745	19745	20651	21509	22222	22973
Complaints Received	1837	1709	1441	1532	n/a	1901	1581	1392	1553	1466	1543
Complaints Investigated	n/a	n/a	n/a	n/a	1537	n/a	n/a	n/a	665	581	979
Num. Formal Charges	29	32	29	n/a	21	26	53	54	36	30	33
Percentage of Formal Charges Compared with Complaints	2%	2%	2%	n/a	n/a	1%	3%	4%	2%	2%	2%
Total Number of Disciplines Imposed	164	181	165	126	126	150	230	217	308	223	309
Percentage of Disciplines Imposed Compared to Complaints Recd	9%	11%	11%	8%	n/a	9%	15%	16%	20%	15%	20%

NORTH DAKOTA

Under the North Dakota constitution, the court has the authority to develop and administer the disciplinary system.⁵¹² The court has implemented a disciplinary board to oversee the conduct of the state's attorneys.⁵¹³ Upon the filing of a petition, the chair of the board will appoint a hearing panel to conduct hearings and submit findings and recommendations.⁵¹⁴

In addition, North Dakota has Inquiry Committees, responsible for investigating all information about a lawyer who has allegedly committed misconduct that, if true, would constitute grounds for disciplinary action, as well as reviewing investigative reports and recommendations, and acting on each complaint.⁵¹⁵

The board or district inquiry committees may consider on their own motions alleged grounds for disciplinary action or evaluate received complaints.⁵¹⁶ If the complaint does not allege facts that are considered grounds for disciplinary action, then the district inquiry committee must dismiss the complaint.⁵¹⁷ There is no appeal from a summary dismissal.⁵¹⁸ If the complaint is not dismissed for failing to allege sufficient facts, then it must be promptly investigated by a committee or the counsel.⁵¹⁹

512. North Dakota Supreme Court Rules, <http://www.ndcourts.com/court/rules/frame.htm> (last visited November 16, 2010).

513. *Id.*

514. North Dakota Supreme Court Rules, *supra* note 513.

515. *Id.*

516. *Id.*

517. *Id.*

518. *Id.*

519. North Dakota Supreme Court Rules, *supra* note 513.

Misconduct can lead to disbarment, suspension, immediate interim suspension, or reprimand, all imposed by the court, or probation, restitution, or admonition by the district inquiry committee.⁵²⁰ Rule 1.2 lists specific grounds for attorney discipline: violating or attempting to violate the North Dakota Rules of Professional Conduct; committing a criminal act that reflects adversely on the attorney's honesty or integrity; stating or implying an ability to improperly influence a government agency or official; engaging in conduct that involves dishonesty, fraud, deceit, or misrepresentation and willfully failing to appear before the board when required to do so.⁵²¹ The board will discipline an attorney for the reasons listed above, unless he acted with "good faith and reasonable reliance" on a written opinion or advisory letter of the ethics committee of the association and the conduct that is the subject of the opinion or advisory letter.⁵²²

The percentage of formal charges compared with the attorney population and complaints filed is not available. However, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly consistently high, ranging from 12% to 23%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	1851	1856	1856	1842	1834	1840	1841	1866	1886	1931	1990
Complaints Received	203	211	181	167	219	199	247	222	194	194	213
Complaints Investigated	234	283	251	131	186	187	142	217	295	252	286
Num. Formal Charges	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total Number of Disciplines Imposed	35	34	40	38	33	38	41	47	46	25	26
Percentage of Disciplines Imposed Compared to Complaints Recd	17%	16%	22%	23%	15%	19%	17%	21%	24%	13%	12%

OHIO

The Supreme Court of Ohio has the constitutional responsibility to oversee the practice of law.⁵²³ Three Offices have been implemented to assist the Supreme Court of Ohio in their disciplinary actions: the Office

520. North Dakota Supreme Court Rules, *supra* note 513.

521. *Id.*

522. *Id.*

523. The Supreme Court of Ohio & The Ohio Judicial System, <http://www.supremecourt.ohio.gov/DisciplinarySys/default.asp>.

of Disciplinary Counsel, the Board of Commissioners on Grievance and Discipline,⁵²⁴ and the Clients' Security Fund.⁵²⁵

Grievances are brought to either the Disciplinary Counsel or a Certified Grievance Committee established by the Board of Commissioners.⁵²⁶ The Office of Disciplinary Counsel investigates allegations and initiates complaints concerning ethical misconduct and mental illness of judges and attorneys.⁵²⁷ Certified Grievance Committees designate bar counsel who must be certified by the disciplinary counsel to supervise the receipt, investigation, and prosecution of grievances.⁵²⁸

Once a grievance has been brought to either the Disciplinary Counsel or a Certified Grievance Committee, the next step is to determine whether or not there is probable cause to continue further investigation.⁵²⁹ If the grievance was brought to the Disciplinary Counsel and no substantial evidence of misconduct was apparent, then the grievance will be dismissed.⁵³⁰ If it is determined by either office that there is substantial credible evidence of misconduct, a complaint is drafted and it proceeds to the Probable Cause Panel of the Board of Commissioners on Grievance and Discipline.⁵³¹ If no probable cause is found, the complaint will be dismissed.⁵³² If probable cause is found, the complaint becomes public and proceeds to the Board of Commissioners on Grievances and Discipline.⁵³³ If an answer is filed, a disciplinary hearing will be conducted, and a recommendation will be made to the Board as to whether a violation has occurred and the appropriate sanction.⁵³⁴ A "master commissioner" is appointed to make a recommendation to the Board of Commissioners on Grievances and Discipline.⁵³⁵ If the full Board agrees with the panel or the master commissioner, it will make a recommendation to the Supreme Court for an appropriate sanction.⁵³⁶ The Supreme Court will then render a decision.

524. *Id.* The Board of Commissioners on Grievance and Discipline was established by the Rules for Government of the Bar and administers, interprets, and enforces Rule V of these Rules concerning ethical misconduct. This office also serves under state law as the ethics commission for filing financial disclosure statements required of Ohio judges, judicial candidates, and magistrates.

525. *Id.* The Client's Security Fund was created in 1985 by the Supreme Court Rules for the Government of the Bar. The purpose of this office is to reimburse losses to clients as a result of dishonest misconduct by an attorney.

526. Supreme Court Rules of the Governance of the Bar of Ohio, <http://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf>.

527. The Supreme Court of Ohio & The Ohio Judicial System, *supra* note 524.

528. *Id.*

529. *Id.*

530. *Id.*

531. *Id.*

532. The Supreme Court of Ohio & The Ohio Judicial System, *supra* note 524.

533. *Id.*

534. *Id.*

535. *Id.*

536. *Id.*

When the Supreme Court of Ohio is ready to render a decision, they can choose from disbarment, suspension for an indefinite period, suspension for six months to two years, probation for a period of time upon conditions of the Supreme Court, or public reprimand.⁵³⁷ If the respondent is disbarred or if he voluntarily suspends his license, he will not be allowed to be readmitted to practice law in Ohio.⁵³⁸ The Ohio Rules list several factors that should be taken into consideration when issuing a sanction. The aggravating factors listed are prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; lack of cooperation in the disciplinary process; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of and resulting harm to victims of the misconduct; and failure to make restitution.⁵³⁹ Also listed are mitigating factors such as the absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board; character or reputation; and imposition of other penalties or sanctions.⁵⁴⁰

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. In addition, the percentage of actual disciplines imposed compared with the number of charges filed has remained consistently low, ranging from 2% to 5%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	38083	36767	38549	33211	39743	38438	40888	36473	42120	41831	42969
Complaints Received	7973	7441	3165	7035	6111	6595	6676	6526	5451	5284	4870
Complaints Investigated	4042	3711	996	2461	2133	2268	2752	2242	2556	2247	2246
Num. Formal Charges	103	78	45	101	96	118	88	106	97	103	92
Percentage of Formal Charges Compared with Complaints	1%	1%	1%	1%	2%	2%	1%	2%	2%	2%	2%
Total Number of Disciplines Imposed	214	214	95	167	242	200	226	182	268	209	194
Percentage of Disciplines Imposed Compared to Complaints Received	3%	3%	3%	2%	4%	3%	3%	3%	5%	4%	4%

537. The Supreme Court of Ohio & The Ohio Judicial System, *supra* note 524.

538. *Id.*

539. The Supreme Court of Ohio & The Ohio Judicial System, *supra* note 524.

540. *Id.*

OKLAHOMA

In Oklahoma, the Oklahoma Bar Association investigates allegations of unethical conduct against lawyers practicing in the state.⁵⁴¹ The Oklahoma Supreme Court gives the Oklahoma Bar Association the authority to investigate complaints against lawyers.⁵⁴² Once a complaint is filed, the Office of the General Counsel will review the information and may decide to open an investigation, ask the complainant to provide more information, or notify the complainant that the office can take no action.⁵⁴³ If the grievance alleges no facts which, if proven true, would constitute a violation of the Oklahoma Rules of Professional Conduct, the letter is treated as an informal grievance.⁵⁴⁴ If, however, the grievance letter is found to contain allegations which would constitute a violation of the Rules, the grievance is designated as a formal grievance.⁵⁴⁵ The Office of the General Counsel will then report to the Professional Responsibility Commission the results of investigations made by or at the direction of the General Counsel.⁵⁴⁶ The Professional Responsibility Commission determines whether the matter is dismissed, that a letter or admonishment be written to the respondent attorney, in lieu of formal charges, can offer the respondent a private reprimand, or can vote the filing of formal charges with the Supreme Court.⁵⁴⁷ After the Professional Responsibility Tribunal has filed its report with the Clerk, the matter is decided by the Oklahoma Supreme Court.⁵⁴⁸ After its consideration, the Supreme Court can: 1) dismiss the proceedings; 2) impose discipline; or 3) take such action as deemed appropriate.⁵⁴⁹

In the event that the Supreme Court does decide to discipline an attorney, the forms of discipline available to the Court are as follows: 1) Suspend or defer the imposition of discipline subject to the fulfillment of specified conditions; 2) issue a private reprimand to the attorney; 3) issue a public censure; 4) suspend an attorney from the practice of law for a definite term or until further order of the Court; or 5) disbar the attorney.⁵⁵⁰ According to Oklahoma statutes, "the commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be

541. Oklahoma Bar Association, <http://www.okbar.org/members/gencounsel/grievance.html>.

542. *Id.*

543. *Id.*

544. Oklahoma Bar Association, What Does the General Counsel Do?, <http://www.okbar.org/members/gencounsel/about.html>.

545. *Id.*

546. Oklahoma Bar Association, <http://www.okbar.org/members/gencounsel/default.html>.

547. *What Does the General Counsel Do*, OK. BAR ASSOCIATION, <http://www.okbar.org/members/gencounsel/about.htm> (last visited Feb. 1, 2011).

548. *Id.*

549. *Id.*

550. *Id.*

found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all."⁵⁵¹

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. Until the most recent years reported, the percentage of actual disciplines imposed compared with the number of charges filed has remained fairly low, ranging from 2% to 5%, but in the most recent years reported, experienced a jump as high as the most recently reported 19%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	14341	14605	14742	14904	14961	15062	15269	14206	15794	16027	16275
Complaints Received	1594	1483	1429	1551	1613	1575	1648	427	468	390	283
Complaints Investigated	441	335	469	533	568	628	609	428	381	444	216
Num. Formal Charges	14	21	20	21	23	16	12	18	11	20	10
Percentage of Formal Charges Compared with Complaints	1%	1%	1%	1%	1%	1%	1%	4%	2%	5%	4%
Total Number of Disciplines Imposed	63	53	52	78	82	54	36	60	37	51	53
Percentage of Disciplines Imposed Compared to Complaints Received	4%	4%	4%	5%	5%	3%	2%	14%	8%	13%	19%

OREGON

The initial screening of all inquiries and complaints regarding lawyer conduct in Oregon is conducted by the Client Assistance Office to determine if there is a sufficient basis to warrant further investigation by the bar.⁵⁵² If there is not a sufficient basis to warrant further investigation, the complaint will be dismissed.⁵⁵³ However, if there is sufficient evidence, the Client Assistance Office will pass the complaint to the Disciplinary Counsel. If Disciplinary Counsel's Office finds sufficient evidence, the complaint will be submitted to the State Professional Responsibility Board

551. *Oklahoma Statutes Citationized: Discipline for Act Contrary to Prescribed Standards of Conduct*, OK. STATE COURTS NETWORK, <http://www.oscn.net/applications/oscn/DeliverDocu-CiteID=100577> (last visited Feb. 1 2011).

552. *If You Have a Problem With Lawyer*, OR. STATE BAR, <http://www.osbar.org/cao> (last visited Feb. 1, 2011).

553. *Id.*

(SPRB) for review.⁵⁵⁴ The SPRB can dismiss the complaint, send the lawyer to a diversion program, admonish the lawyer, or authorize formal charges against the lawyer.⁵⁵⁵ The Local Professional Responsibility Committees (LPRC) carry out investigative assignments from the Disciplinary Counsels Office or the State Professional Responsibility Board (SPRB).⁵⁵⁶ Complaints involving a lawyer in a locality may be referred to the LPRC by the SPRB if the nature of the allegations or the location of witnesses or documents are such that a proper investigation must be done at the local level.⁵⁵⁷ LPRCs prepare written findings that are submitted back to the SPRB for evaluation and action.⁵⁵⁸ If the SPRB finds that probable cause exists to believe that a disciplinary rule violation has occurred, formal charges may be filed against the lawyer.⁵⁵⁹ A trial panel will be appointed to act as a judge.⁵⁶⁰

In Oregon, the possible sanctions for lawyer misconduct are as follows: public reprimand, suspension for thirty days to five years, suspension for any period which may be stayed in whole or in part on the condition that designated probationary terms are met, or disbarment.⁵⁶¹ The Supreme Court has the authority to disbar, suspend, or reprimand a member of the Bar.⁵⁶²

The percentage of formal charges, as compared with the active attorney population, has remained at 1%. The percentage of formal charges compared with complaints filed has not often been reported, but when it has, ranged from 4% to 9% in recent years. The percentage of actual disciplines imposed compared with the number of charges filed has frequently remained higher, from 7% to 20%.

554. *Id.*

555. *If You Have a Problem With Lawyer*, OR. STATE BAR, <http://www.osbar.org/cao> (last visited Feb. 1, 2011).

556. *Local Professional Responsibility Committee*, OR. STATE BAR, <http://www.osbar.org/discipline/lprc.html> (last visited Feb. 1, 2011).

557. *Id.*

558. *Id.*

559. *If You Have a Problem With Lawyer*, OR. STATE BAR, <http://www.osbar.org/cao> (last visited Feb. 1, 2011).

560. *Id.*

561. OR. STATE BAR RULES OF PROCEDURE R. 6.1 (2010), available at www.osbar.org/_docs/rulesregs/rulesofprocedure.pdf.

562. *In re Bernabei*, 23 DB Rptr. 1 (2009), available at <http://www.osbar.org/docs/dbreport/dbr23.pdf>.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	11250	11300	11500	11500	11800	12250	12550	12770	13111	13500	13550
Complaints Received ⁵⁶³	1361	1353	1404	1327	1424	1542	1738	2297	2247	1721	1735
Complaints Investigated	763	735	737	675	670	740	840	1500	1350	1070	1031
Num. Formal Charges	n/a	n/a	n/a	n/a	n/a	n/a	n/a	131	94	133	153
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6%	4%	8%	9%
Total Number of Disciplines Imposed	140	94	154	191	293	226	186	183	190	220	207
Percentage of Disciplines Imposed Compared to Complaints Received	10%	7%	11%	14%	20%	15%	11%	8%	8%	13%	12%

PENNSYLVANIA

All investigations are initiated and conducted by Disciplinary Counsel.⁵⁶⁴ Upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous, as falling outside the jurisdiction of the Board, or recommend dismissal of the complaint, a conditional or unconditional admonition, a conditional or unconditional private reprimand by the Board, or the prosecution of formal charges before a hearing committee or special master.⁵⁶⁵ Unless the complaint is dismissed because it was frivolous or outside the jurisdiction of the Board, the recommended disposition will be reviewed by a member of a hearing committee in the appropriate disciplinary district who may approve or modify.⁵⁶⁶ Disciplinary Counsel may appeal the recommended disposition directed by a hearing committee member to a reviewing panel.⁵⁶⁷

The Supreme Court of Pennsylvania appoints The Disciplinary Board of the Supreme Court of Pennsylvania, who can appoint a hearing committee from the appropriate district to hear a matter.⁵⁶⁸ Hearing committees have the power and duty to conduct investigatory hearings and hearings into formal

563. Oregon 06 includes matters handled by consumer assistance program and excludes lawyers admonished in the final formal charges.

564. PA. RULES OF DISCIPLINARY ENFORCEMENT R. 205 (2010), available at, <http://www.pacode.com/secure/data/204/chapter83/chap83toc.html> (last visited November 16, 2010).

565. *Id.*

566. PA. RULES OF DISCIPLINARY ENFORCEMENT R. 208 (2010), available at, <http://www.pacode.com/secure/data/204/chapter83/chap83toc.html> (last visited November 16, 2010).

567. *Id.*

568. PA. RULES OF DISCIPLINARY ENFORCEMENT R. 205 (2010), available at, <http://www.pacode.com/secure/data/204/chapter83/chap83toc.html> (last visited November 16, 2010). (There are four districts, made up of different counties.).

charges of misconduct upon the assignment by the Board or the Secretary of the Board and to submit their conclusions set forth as prescribed by Board rules, together with the record of the hearing, to the Board.⁵⁶⁹

In Pennsylvania, misconduct is grounds for one of the following: disbarment by the Supreme Court, suspension by the Supreme Court for a period not exceeding five years, public censure by the Supreme Court with or without probation, probation by the Supreme Court under supervision provided by the Board, private reprimand by the Board with or without probation, private informal admonition by Disciplinary Counsel, or revocation of an attorney's admission or license to practice law.⁵⁷⁰

The percentage of formal charges, as compared with the active attorney population, has remained at or less than 1%. The percentage of formal charges compared with complaints filed has remained low, ranging from 1% to 6%. The percentage of disciplines imposed compared to complaints received has remained very constant, from 5% to 7%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	53241	54052	54934	54063	55593	55360	56528	57086	58917	60619	60531
Complaints Received	4845	4565	4562	4738	4998	5013	4891	4716	4767	4733	4787
Complaints Investigated	n/a	n/a	n/a	n/a	4719	4841	4867	5629	5637	5502	5641
Num. Formal Charges	61	71	62	86	74	110	297	228	211	237	243
Percentage of Formal Charges Compared with Complaints	1%	2%	1%	2%	1%	2%	6%	5%	4%	5%	5%
Total Number of Disciplines Imposed	269	232	231	231	288	261	319	385	346	288	323
Percentage of Disciplines Imposed Compared to Complaints Received	6%	5%	5%	5%	6%	5%	7%	8%	7%	6%	7%

RHODE ISLAND

The Supreme Court of Rhode Island appoints twelve members to the Disciplinary Board (hereinafter, "the Board"), the goal of which is to process disciplinary complaints filed against Rhode Island attorneys.⁵⁷¹ The Board oversees the Office of Disciplinary Counsel, which reviews and investigates all allegations of attorney misconduct.⁵⁷² When appropriate,

569. PA. RULES OF DISCIPLINARY ENFORCEMENT R. 206 (2010).

570. PA. RULES OF DISCIPLINARY ENFORCEMENT R. 204 (2010).

571. *Disciplinary Board*, RHODE ISLAND SUPREME COURT, <http://www.courts.ri.gov/supreme/disciplinary/defaultdisciplinary.htm> (last visited Feb. 1, 2011).

572. *Id.*

the Board authorizes the filing of formal charges against an attorney, and then conducts hearings and makes recommendations to the court for the imposition of discipline.⁵⁷³ The Board Chair must also appoint and designate one or more screening panels, which shall consist of two attorney members and one non-attorney member.⁵⁷⁴ The Screening Panel reviews the recommendation for disposition submitted by The Supreme Court Disciplinary Counsel, which is the investigative arm of the Board.⁵⁷⁵

The Screening Panel may issue one of the following: dismissal of the complaint; dismissal of the complaint with an admonition; recommend the issuance of a letter of reprimand; or delay disposition for a period not to exceed 36 months on condition that a respondent attorney undergo physical and/or psychiatric examination.⁵⁷⁶ After review of the Screening Panel's recommendation, the Board can vote to dismiss the complaint, dismiss the complaint with admonition, or accept the recommendation of the Screening Panel to issue a letter of reprimand or to authorize a petition for formal disciplinary action.⁵⁷⁷ Disciplinary Counsel institutes formal disciplinary proceedings in either of the following cases: 1) pursuant to a referral by the Supreme Court following the conviction of the Respondent of a crime; or 2) pursuant to a determination to institute formal proceedings made under the Supreme Court Rules.

The percentage of formal charges, as compared with the active attorney population, has remained less than 1%. The percentage of formal charges compared with complaints filed has remained consistently low. However, the percentage of disciplines imposed compared to complaints received has varied at a higher rate, from 5% up to 17%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	4035	4132	4271	4368	4381	4631	4590	4865	4700	8000	5160
Complaints Received	449	391	429	406	434	442	423	424	398	388	461
Complaints Investigated	250	297	320	311	320	330	335	337	316	290	n/a
Num. Formal Charges	5	3	5	6	4	3	8	4	8	14	6
Percentage of Formal Charges Compared with Complaints	1%	1%	1%	1%	1%	1%	2%	1%	2%	4%	1%
Total Number of Disciplines Imposed	71	65	39	31	20	68	56	51	38	36	32
Percentage of Disciplines Imposed Compared to Complaints Received	16%	17%	9%	8%	5%	15%	13%	12%	10%	9%	7%

573. *Id.*

574. RULES OF PROCEDURE OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF R. I. SEC 1.2 (2010), available at <http://www.courts.state.ri.us/supreme/disciplinary/procedure.htm>.

575. *Id.*; see also RULES OF PROCEDURE OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF R. I. SEC 1.3 (2010), available at <http://www.courts.ri.gov/supreme/disciplinary/defaultdisciplinary.htm>.

576. *Id.*

577. RULES OF PROCEDURE OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF R. I. SEC 2.3 (2010).

SOUTH CAROLINA

In South Carolina, the task of regulating lawyers falls to the Office of Disciplinary Counsel, and the Commission on Lawyer Conduct.⁵⁷⁸ The Office of Disciplinary Counsel is primarily tasked with screening and investigating the complaints made against lawyers.⁵⁷⁹ The Office is also responsible for prosecuting those lawyers who have either committed ethical misconduct, or are suffering from a physical or mental condition which adversely affects their ability to serve the public.⁵⁸⁰ Disciplinary Counsel is responsible for reviewing, investigating, and prosecuting attorney matters and is aided in its efforts by Attorneys to Assist Disciplinary Counsel, appointed by the Court, who serve from all areas of the State of South Carolina.⁵⁸¹

When a complaint is filed, the Office of Disciplinary Counsel conducts a preliminary investigation.⁵⁸² If the investigation reveals evidence of misconduct, the Commission on Lawyer Conduct will authorize the Office of Disciplinary Counsel to conduct a full investigation.⁵⁸³ The Commission will then conclude the matter with a dismissal or letter of caution, discipline by the consent of the lawyer, or a public hearing.⁵⁸⁴ If a public hearing is required, it will be held by members of the Commission who will file a report and recommendation with the South Carolina Supreme Court.⁵⁸⁵ The Supreme Court makes the final determination in contested matters and can dismiss the grievance or impose sanction.⁵⁸⁶

It is professional misconduct for a lawyer to:

- a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c) commit a criminal act involving moral turpitude;

578. *Disciplinary Counsel*, S.C. JUDICIAL DEPARTMENT, <http://www.judicial.state.sc.us/discounsel/index.cfm> (last visited Feb. 1, 2011).

579. *Id.*

580. *Id.*

581. *Id.*

582. *Filing a Grievance*, S.C. BAR, http://www.schar.org/public_services/lawline/filing_a_grievance_against_an_attorney/ (last visited Feb. 1, 2011).

583. *Id.*

584. *Id.*

585. *Id.*

586. *Id.*

- d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- e) engage in conduct that is prejudicial to the administration of justice;
- f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- g) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.⁵⁸⁷

The discipline imposed can range from a confidential letter of caution to total disbarment.⁵⁸⁸ In rare cases, a portion of fees paid may be ordered returned to the client, or other types of financial restitution ordered.⁵⁸⁹

Additionally, a legislator recently proposed to eliminate the state supreme court's power to regulate attorney admission to the bar and discipline.⁵⁹⁰ The proposal would see the profession "self-regulated" by lawyers instead of the court.⁵⁹¹ Similar legislation has been pursued in Arizona, Wisconsin, and unsuccessfully in Missouri, Montana and Wisconsin.⁵⁹²

The percentage of formal charges, as compared with the active attorney population, has varied from less than 1% to 3%. With the exception of one recent year, the percentage of formal charges compared with complaints filed has remained consistently low. However, the percentage of disciplines imposed compared to complaints received has varied, with jumps from a low of 7% to a high of 26%.

587. S.C. RULES OF PROF'L CONDUCT R. 8.4 (2010), available at <http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%208%2E4&ruleType=APP>.
588. *Filing a Grievance Against an Attorney*, S.C. BAR, http://www.scbars.org/public_services/lawline/filing_a_grievance_against_an_attorney/ (last visited Feb. 1, 2011).
589. *Id.*
590. Martha Neil, *Some States Seek to Limit Judicial Power to Regulate Lawyer*, A.B.A. JOURNAL, www.abajournal.com/news (last visited February 5, 2008).
591. *Id.*
592. Vesna Jaksic, *Attorney Discipline Web Data Uneven*, National Law Journal, September 10, 2007.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	9501	9916	n/a	7615	8792	8931	8042	9600	n/a	8200	13157
Complaints Received	1242	1363	1235	1200	1127	1233	1368	1383	n/a	1402	1646
Complaints Investigated	1690	1862	1847	1921	1866	1799	1861	1982	n/a	1280	1319
Num. Formal Charges	26	25	n/a	36	19	22	n/a	18	n/a	255	n/a
Percentage of Formal Charges Compared with Complaints	2%	2%	n/a	3%	2%	2%	n/a	1%	n/a	18%	n/a
Total Number of Disciplines Imposed	108	115	323	87	131	87	92	95	n/a	333	246
Percentage of Disciplines Imposed Compared to Complaints Received	9%	8%	26%	7%	12%	7%	7%	7%	n/a	24%	15%

SOUTH DAKOTA

The South Dakota Bar Association is responsible to the South Dakota Supreme Court for the admission and discipline process.⁵⁹³ Discipline is administered through the Disciplinary Board of the State Bar, the Attorney General of the State of South Dakota, and the South Dakota Supreme Court.⁵⁹⁴

Upon the receipt of a written complaint, it will be reviewed by the Board.⁵⁹⁵ If it appears that sufficient grounds exist, the next step is investigation.⁵⁹⁶ In simple matters, the investigation is conducted by a member of the Disciplinary Board through correspondence with the client and the lawyer.⁵⁹⁷ In more complicated matters, where there may be witnesses involved, accounting problems, or disputed facts, the Disciplinary Board uses an investigator.⁵⁹⁸ Disciplinary hearings may be held before the seven member Disciplinary Board.⁵⁹⁹ If the board determines the lawyer has done no wrong, the complaint is dismissed.⁶⁰⁰ The board may issue a private reprimand in less serious cases of wrongdoing.⁶⁰¹ More serious violations are reported to the Supreme Court, which may in turn, refer the matter to a circuit court judge to act as a referee, try the matter, and recommend discipline to the Supreme Court.⁶⁰²

593. *State Bar of South Dakota*, S.D. STATE BAR, <http://www.sdbar.org/> (last visited Feb. 1, 2011).
594. *Lawyer Discipline*, S.D. STATE BAR, <http://www.sdbar.org/phamphlets/Lawyer%20Discipline.pdf> (last visited Feb. 1, 2011).
595. *Id.*
596. *Id.*
597. *Id.*
598. *Lawyer Discipline*, <http://www.sdbar.org/phamphlets/Lawyer%20Discipline.pdf> (last visited Feb. 1, 2011).
599. *Id.*
600. *Id.*
601. *Id.*
602. *Id.*

It is professional misconduct for a lawyer to:

- a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- d) engage in conduct that is prejudicial to the administration of justice;
- e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.⁶⁰³

Discipline may take one of several forms, depending on the circumstances and severity of the offense.⁶⁰⁴ It may range from a private reprimand by the board, public censure, suspension from practice for a specified time, placement on probation, to disbarment by the Supreme Court.⁶⁰⁵

The percentage of formal charges as compared with the active attorney population has varied from less than 1% to 4%. The percentage of formal charges compared with complaints filed has varied widely, from a low of 1% up to a high of 33%. However, the percentage of disciplines imposed compared to complaints received has remained at a higher rate, from 17% up to 52% in varying years.

603. S.D. RULES OF PROF'L RESPONSIBILITY R. 8.4 (2003), <http://www.sdbar.org/Rules/rules.shtm>. (last visited Feb. 1, 2011).

604. LAWYER DISCIPLINES, S.D. STATE BAR, <http://www.sdbar.org/phamphlets/Lawyer%20Discipline.pdf>. (last visited Feb. 1, 2011).

605. *Id.*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	n/a	n/a	1981	n/a	n/a	2000	2105	2153	2250	2282	1956
Complaints Received	n/a	n/a	100	n/a	n/a	112	81	113	120	118	72
Complaints Investigated	n/a	n/a	119	n/a	n/a	92	85	98	120	118	72
Num. Formal Charges	n/a	n/a	8	n/a	n/a	7	1	85	39	9	9
Percentage of Formal Charges Compared with Complaints	n/a	n/a	8%	n/a	n/a	6%	1%	75%	33%	5%	13%
Total Number of Disciplines Imposed	n/a	n/a	30	n/a	n/a	27	42	29	38	36	12
Percentage of Disciplines Imposed Compared to Complaints Received	n/a	n/a	30%	n/a	n/a	24%	52%	26%	32%	31%	17%

TENNESSEE

The Tennessee Supreme Court designated its Board of Professional Responsibility to aid it in supervising the ethical conduct of attorneys.⁶⁰⁶ The Board of Professional Responsibility is comprised of nine lawyer members, three non-lawyer members, as well as Disciplinary Counsel.⁶⁰⁷

After a complaint is filed, there is an inquiry into the complaint.⁶⁰⁸ The purposes of the inquiry are twofold: to determine the facts as nearly as may be, and to provide a factual basis for determination as to whether probable cause of discipline exists.⁶⁰⁹ A recommendation on each complaint, other than those with no basis for discipline or those not within the jurisdiction of the Board, is made to a Member of the Hearing Committee on the Board.⁶¹⁰ This "Reviewing Member" may be one of the lawyers selected by the Supreme Court on a statewide basis to serve on a voluntary basis.⁶¹¹ For those complaints in which probable cause for discipline exists, the matter is referred to Disciplinary Counsel for either prosecution of formal charges before a Hearing Committee or the administering of an Informal Discipline by Disciplinary Counsel.⁶¹²

Disciplinary hearings are held before a hearing committee composed of three members.⁶¹³ The decision of the hearing committee is made in the form of a written report and recommendation to the Board.⁶¹⁴ The hearing

606. About the Board, <http://www.tbpr.org/TheBoard/Default.aspx> (last visited Feb. 2, 2011).

607. About the Board, *supra* note 607.

608. Complaints and Inquiries, <http://www.tbpr.org/Consumers/ComplaintsAndInquiry.aspx> (last visited Feb. 2, 2011).

609. Complaints and Inquiries, *supra* note 609.

610. *Id.*

611. *Id.*

612. *Id.*

613. Hearings and Reviews, <http://www.tbpr.org/Consumers/HearingsAndReviews.aspx> (last visited Feb. 2, 2011).

614. Hearings and Reviews, *supra* note 614.

committee report is reviewed by the entire Board.⁶¹⁵ When the discipline is less severe than disbarment or suspension, it is imposed following the decision of the Board, and the matter ends unless the attorney so disciplined requests consideration of the case by the Supreme Court.⁶¹⁶ Suspension or disbarment can be ordered only by the Supreme Court.⁶¹⁷ All hearing records in which one of the sanctions has been recommended by the Board go to the Supreme Court for review and final action.⁶¹⁸

It is professional misconduct for a lawyer to:

- a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- d) engage in conduct that is prejudicial to the administration of justice;
- e) attempt to, or state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;
- f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.⁶¹⁹

Discipline of lawyers may take one of several forms, depending on the particular circumstances and the severity of the offense: private admoni-

615. *Id.*

616. *Id.*

617. *Id.*

618. *Id.*

619. TN Rules of Prof'l, Rule 8.4 http://www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/06supct1_9.htm#8 (last visited Feb. 2, 2011).

tion, private reprimand, public censure, suspension from practice for a specified time, or disbarment.⁶²⁰

The percentage of formal charges, as compared with the active attorney population, has remained at or less than 1%. The percentage of formal charges compared with complaints filed has remained fairly constant, from 4% to 9%. However, the percentage of disciplines imposed compared to complaints received has varied at a higher rate, from 11% up to 30%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	14822	15219	15485	15958	16226	16488	16871	17389	18507	18568	19677
Complaints Received	2098	1921	1787	1812	1816	1507	1247	1268	1258	1064	875
Complaints Investigated	n/a	n/a	n/a	n/a	n/a	n/a	926	1043	1409	1363	1482
Num. Formal Charges	134	90	161	146	77	n/a	48	59	90	69	42
Percentage of Formal Charges Compared with Complaints	6%	5%	9%	8%	4%	n/a	4%	5%	7%	6%	5%
Total Number of Disciplines Imposed	257	235	235	197	236	220	173	229	248	170	260
Percentage of Disciplines Imposed Compared to Complaints Received	12%	12%	13%	11%	13%	15%	14%	22%	20%	16%	30%

TEXAS

Subject to the inherent power of the Supreme Court of Texas, the responsibility for administering and supervising lawyer discipline and disability is delegated to the Board of Directors of the State Bar of Texas.⁶²¹ The Board of Directors uses a Commission and Grievance Panel in its work, and public members comprise 50% of the twelve member Commission for Lawyer Discipline and 33% of grievance panels.⁶²²

After a grievance is received by the State Bar of Texas, it is reviewed by the Chief Disciplinary Counsel's Office (CDC) to determine whether the attorney has committed a violation.⁶²³ One of two possibilities could occur. First, the CDC determines that the grievance does not allege a vio-

620. Purpose of Discipline, <http://www.tbpr.org/Consumers/PurposeOfDiscipline.aspx> (last visited Feb. 2, 2011).

621. Tex. Rules of Disciplinary Proc. at 3, http://www.texasbar.com/AM/Template.cfm?Section=Complaints_Against_Your_Lawyer&Template=/CM/ContentDisplay.cfm&ContentID=8544 (last visited Feb. 2, 2011).

622. Tex. Att. Disciplinary Sys., <http://www.texasbar.com/Content/NavigationMenu/AboutUs/FortheMedia/MediaResources/Media-Lawyer-Discipline-Information.pdf> (last visited Feb. 2, 2011).

623. The State Bar of Tex., Att. Complaint Info., http://www.texasbar.com/AM/Template.cfm?Section=How_to_File_a_Complaint#next (last visited Feb. 2, 2011).

lation of the disciplinary rules and the matter is classified as an "inquiry" and dismissed.⁶²⁴ At this point, the complainant can appeal the dismissal to the Board of Disciplinary Appeals (BODA).⁶²⁵ If the Board of Disciplinary Appeals denies the appeal, the complainant can resubmit the grievance if there is new information or additional information not included when the grievance was first filed.⁶²⁶ If the Board of Disciplinary Appeals dismisses the grievance again, the decision is final and the complainant has no more appeals.⁶²⁷

Alternatively, if the CDC determines that the grievance does allege a violation of the disciplinary rules, it is classified as a "complaint."⁶²⁸ The lawyer is informed of the complaint and asked to respond within thirty days.⁶²⁹ The CDC investigates the matter. If the case does not go directly to trial court, it will be presented to a Summary Disposition Panel to determine if the grievance should be dismissed.⁶³⁰ If it is dismissed, the complainant is notified in writing.⁶³¹ The complainant cannot appeal the dismissal to the Board of Disciplinary Appeals (BODA).⁶³² If the Board of Disciplinary Appeals denies the appeal, the complainant can resubmit the grievance if there is new information or additional information not included when the grievance was first filed.⁶³³ If it goes to trial court, a jury may be requested by either side. The trial court will enter judgment after the close of evidence or after the return of the jury's verdict.⁶³⁴

In Texas, the rule demonstrates that a lawyer shall not:

- 1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
- 2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects;
- 3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

624. The State Bar of Tex., *supra* note 624.

625. *Id.*

626. *Id.*

627. *Id.*

628. *Id.*

629. The State Bar of Tex., *supra* note 624.

630. *Id.*

631. *Id.*

632. *Id.*

633. *Id.*

634. The State Bar of Tex., *supra* note 624.

- 4) engage in conduct constituting obstruction of justice;
- 5) state or imply an ability to influence improperly a government agency or official;
- 6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- 7) violate any disciplinary or disability order or judgment;
- 8) fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so;
- 9) engage in conduct that constitutes barratry as defined by the law of this state;
- 10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorneys cessation of practice;
- 11) engage in the practice of law when the lawyer is on inactive status or when the lawyers right to practice has been suspended or terminated, including but not limited to situations where a lawyers right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or
- 12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.⁶³⁵

The range of sanctions for lawyers found engaging in professional misconduct includes private or public reprimand, suspension from the practice of law, resignation in lieu of disbarment, or disbarment.⁶³⁶

The percentage of formal charges as compared with the active attorney population has remained at or less than 1%. The percentage of formal

635. Tex. Disciplinary Rules of Prof'l Conduct, Rule 8.04, <http://www.txethics.org/Chapter.aspx?id=110&rid=3> (last visited Feb. 2, 2011).

636. Tex. Att. Disciplinary Sys., *supra* note 623.

charges compared with complaints filed has stayed fairly constant, from 3% to 9%. In addition, the percentage of disciplines imposed compared to complaints received has also stayed fairly consistent, from 6% up to only 12%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	63893	65285	77284	69341	68788	73951	74581	76760	77000	80094	82414
Complaints Received	8484	9040	9430	8962	9027	7518	8404	7013	7494	6954 ⁶³⁷	7308
Complaints Investigated	3320	3455	3033	2746	3186	2609	2936	2495	2552	2247	2147
Num. Formal Charges	586	672	n/a	236	509	n/a	n/a	665	665	582	556
Percentage of Formal Charges Compared with Complaints	7%	7%	n/a	3%	6%	n/a	n/a	9%	9%	8%	8%
Total Number of Disciplines Imposed	778	860	811	854	783	676	676	565	901	559	447
Percentage of Disciplines Imposed Compared to Complaints Received	9%	10%	9%	10%	9%	9%	8%	8%	12%	8%	6%

UTAH

The Utah Supreme Court governs the licensing and discipline of lawyers in Utah.⁶³⁸ The process of investigating alleged misconduct, the administration of disciplinary hearings and the possibility of disciplinary action against lawyers is set out in the Court's Rules of Lawyer Discipline and Disability.⁶³⁹ The rules are administered jointly by the Bar's Office of Professional Conduct (OPC) and by the Court's Ethics and Discipline Committee and the Committee's screening panels.⁶⁴⁰ The Committee and its screening panels are appointed by the Court and are made up of community representatives and lawyers.⁶⁴¹

After receipt of a notarized and verified informal complaint, the OPC conducts a preliminary investigation which usually includes seeking additional facts from the complainant.⁶⁴² The OPC sends the attorney a notice of informal complaint (NOIC).⁶⁴³ The attorney must respond in writing

637. Excludes cases handled by consumer assistance program.

638. Utahbar.org, Att. Discipline, FAQ, http://www.utahbar.org/opc/faq_lawyer_discipline.html (last visited Feb. 2, 2011).

639. Utahbar.org, *supra* note 638.

640. *Id.*

641. *Id.*

642. Utahbar.org, Disciplinary Process, <http://www.utahbar.org/opc/Assets/diagram.pdf> (last visited Feb. 2, 2011).

643. Utahbar.org, *supra* note 642.

and sign the response.⁶⁴⁴ The OPC sends a copy of the attorney's response to complainant and, where necessary, conducts additional investigation.⁶⁴⁵ If warranted, the case is referred to the Screening Panel of the Ethics and Discipline Committee.⁶⁴⁶ The Screening Panel reviews informal complaints referred by OPC, including all facts developed by the informal complaint, the attorney's answer, investigation and hearing, and the OPC's recommendation.⁶⁴⁷ The Screening Panel will then choose one of two options: First, the Screening Panel may dismiss the case (either outright, or with a caution or upon condition) or recommend that the Chair issue private admonition or public reprimand.⁶⁴⁸ Second, the Screening Panel directs the OPC to file the complaint in district court.⁶⁴⁹ The Chair of the Ethics and Discipline Committee signs the complaint.⁶⁵⁰ The court may then impose discipline (except Resignation with Discipline Pending) or dismiss the case.⁶⁵¹

It is professional misconduct for a lawyer to:

- violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- engage in conduct that is prejudicial to the administration of justice;
- state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.⁶⁵²

644. *Id.*

645. *Id.*

646. *Id.*

647. *Id.*

648. Utahbar.org, *supra* note 642.

649. *Id.*

650. *Id.*

651. *Id.*

652. Utah Rules of Prof'l Conduct, Rule 8.4, <http://www.utcourts.gov/resources/rules/ucja/>

The range of sanctions for lawyers found engaging in professional misconduct includes diversion, private or public reprimand, probation, suspension from the practice of law, resignation in lieu of disbarment, or disbarment.⁶⁵³

The percentage of formal charges, as compared with the active attorney population, has remained at or less than 1%. The percentage of formal charges compared with complaints filed has remained fairly low, under 6%. However, the percentage of disciplines imposed compared to complaints received has stayed slightly higher, from 7% up to 11%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	n/a	n/a	5626	5863	6123	6273	6413	6584	6584	7245	7618
Complaints Received	n/a	n/a	1067	1094	1096	1038	1064	1017	1017	999 ⁶⁵⁴	877
Complaints Investigated	n/a	n/a	1651	1750	1121	943	852	693	693	1465	1287
Num. Formal Charges	n/a	n/a	30	21	90	54	22	57	57	24	15
Percentage of Formal Charges Compared with Complaints	n/a	n/a	3%	2%	8%	5%	2%	6%	6%	2%	2%
Total Number of Disciplines Imposed	n/a	n/a	90	86	99	73	85	113	112	73	88
Percentage of Disciplines Imposed Compared to Complaints Received	n/a	n/a	8%	8%	9%	7%	8%	11%	11%	7%	10%

VERMONT

The Vermont Supreme Court has the authority to oversee the professional conduct of all lawyers practicing within the state.⁶⁵⁵ The Vermont Professional Responsibility Board is appointed by the Supreme Court and employs a Disciplinary Counsel and a Bar Counsel.⁶⁵⁶ The Vermont Professional Responsibility Board administers the overall program while the Disciplinary Counsel screens all complaints of attorney misconduct.⁶⁵⁷ The Bar Counsel provides assistance to complainants, oversees assistance panels, and publishes decisions.⁶⁵⁸

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional Conduct the complainant must send a letter to the Office of Disciplinary Counsel.⁶⁵⁹ No special

ch13/8_4.html (last visited Feb. 2, 2011).

653. Utahbar.org, Disciplinary Process, <http://www.utahbar.org/opc/Assets/diagram.pdf> (last visited Feb. 2, 2011).

654. Includes matters handled by central intake.

655. Vermontjudiciary.org, Prof'l Responsibility Bd. Info., www.vermontjudiciary.org/Committees/boards/prb.html (last visited Feb. 2, 2011).

656. Vermontjudiciary.org, *supra* note 656.

657. *Id.*

658. Vermontjudiciary.org, Admin Order No. 9, <http://vermontjudiciary.org/LC/Shared%20Documents/PRB-FilingaComplaintBrouchure.doc> (last visited Feb. 2, 2011).

659. Complaint Brochure, <http://vermontjudiciary.org/LC/Shared%20Documents/PRB-FilingaComplaintBrouchure.doc> (last visited Feb. 2, 2011).

format or language is necessary but should include enough as to reasonably inform the reader of the alleged misconduct.⁶⁶⁰

The Vermont Rules of Professional Conduct lists the conduct that would warrant a violation:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) engage in a "serious crime", defined as illegal conduct involving any felony or involving any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, intentional misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime";

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(g) discriminate against any individual because of his own race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or otherwise determining the conditions of employment of that individual.⁶⁶¹

Once the Office of Disciplinary Counsel receives the complaint they conduct a limited investigation to determine the nature of the inquiry and whether or not the issue can be resolved through non-disciplinary resolution.⁶⁶² Counsel can attempt to resolve the complaint or dismiss it.⁶⁶³ The

660. Complaint Brochure, *supra* note 659.

661. Vt. Rules of Prof'l Conduct, Rule 8.4.

662. Vermontjudiciary.org, *supra* note 658.

663. *Id.*

Board has the authority to establish assistance panels which provide prompt resolution, other than disciplinary manners.⁶⁶⁴

However, if the conduct appears to amount to misconduct under the Professional Rules, a further investigation is conducted.⁶⁶⁵ The Disciplinary Counsel reports the results of the investigation to a Hearing Panel consisting of two members of the bar and one member of the public.⁶⁶⁶ The Hearing Panel then determines if there is probable cause to believe that a violation of the Professional Rules has occurred.⁶⁶⁷ Where they find that misconduct has occurred they instruct the Disciplinary Counsel to bring formal charges.⁶⁶⁸ A formal hearing may then occur, when the Disciplinary Counsel must prove by clear and convincing evidence the alleged violation occurred.⁶⁶⁹ Discipline of attorneys may take one of the following forms:

1. Admonition by Disciplinary Counsel before formal charges; or
2. Admonition by a hearing panel imposed after former charges are filed; or
3. Public Reprimand by publication in the Law Reporter or newspaper; or
4. Probation, which may be imposed only in conjunction with another sanction; or
5. Reimbursement of fees or monies collected by the lawyer, when ordered in conjunction with another sanction; or
6. Suspension, for a period not exceeding three years; or
7. Disbarment, in which case the lawyer is not eligible for readmission for at least five years.⁶⁷⁰

The Hearing Panel looks at the particular circumstances and severity of the offense to determine the appropriate disciplinary action.⁶⁷¹ The Vermont Rules of Professional Conduct are based on the ABA Model Rules of Professional Conduct, which suggest an analysis of four factors to be con-

664. *Id.*

665. *Id.*

666. *Id.*

667. Vermontjudiciary.org, *supra* note 658.

668. *Id.*

669. *Id.*

670. *Id.*

671. Complaint Brochure, *supra* note 659.

sidered: the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors.⁶⁷²

The percentage of formal charges, as compared with the active attorney population, has ranged from less than 1% to 3%. The percentage of formal charges compared with complaints filed has varied dramatically from a high in earlier years reported of 29% to the near low of the most current year reported, 5%. However, the percentage of disciplines imposed compared to complaints received has varied at less a difference, from 5% up to 12%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	2055	2159	2278	n/a	2300	2500	2700	2000	2000	2000	2000
Complaints Received	243	n/a	217	204	247	285	268	264	275	262	242
Complaints Investigated	59	n/a	n/a	253	317	379	225	247	264	333	225
Num. Formal Charges	70	n/a	20	16	14	21	42	10	22	14	13
Percentage of Formal Charges Compared with Complaints	29%	n/a	9%	8%	6%	7%	16%	4%	8%	5%	5%
Total Number of Disciplines Imposed	11	n/a	26	17	22	22	16	21	20	9	16
Percentage of Disciplines Imposed Compared to Complaints Received	5%	n/a	12%	8%	9%	8%	6%	8%	7%	3%	7%

VIRGINIA

The Virginia State Bar has the authority to discipline attorneys for ethical violations of the Virginia Rules of Professional Conduct.⁶⁷³ Within the Virginia State Bar, the Office of Bar Counsel reviews all complaints.⁶⁷⁴

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional conduct the complainant must file an inquiry in writing to the Intake Office of the Virginia State Bar.⁶⁷⁵ An online inquiry may also be submitted through the Intake Office of the Virginia State Bar.⁶⁷⁶ No special language or form is necessary; however, the letter or form must contain the complainant's and lawyers'

672. ABA Joint Comm. on Prof'l Sanction, Standards for Imposing Lawyer Sanctions (2005), available at www.abanet.org/cpr/regulation/standards_sanctions.pdf. (last visited Feb. 2, 2011).

673. Virginia State Bar, How to File a Misconduct Inquiry About A Lawyer, <http://www.vsb.org/site/regulation/inquiry/>.

674. Virginia State Bar, An Agency of the Supreme Court of Virginia, <http://www.vsb.org/site/regulation/lawyer-discipline/>.

675. Virginia State Bar, How to File a Misconduct Inquiry About A Lawyer, <http://www.vsb.org/site/regulation/inquiry/>.

676. *Id.*

full name, address, and phone number as well as a brief description of the facts explaining the situation and the complainant's signature.⁶⁷⁷

The Virginia Rules of Professional Conduct lists the conduct that would warrant a violation:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;
- (d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or
- (e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.⁶⁷⁸

Once an inquiry is sent to the Intake Office of the Virginia State Bar a four stage process begins.⁶⁷⁹ Stage one is known as the Preliminary Investigation Stage in which the complaint gets assigned to a Virginia State Bar Attorney for investigation.⁶⁸⁰ The attorney sends the complaint to the lawyer who is the subject of the complaint, and the preliminary investigation begins.⁶⁸¹ This phase typically takes about 60 days and the attorney will then notify the complainant that the complaint has either been dismissed or referred for a more detailed investigation.⁶⁸²

Stage two is further investigation.⁶⁸³ During this stage the complaint will be sent to a district committee made up of lawyers and non-lawyers and assigned an investigator.⁶⁸⁴ The investigator will prepare a report for

677. *Id.*

678. Virginia Rule of Professional Conduct, Rule 8.4.

679. Virginia State Bar, An Agency of the Supreme Court of Virginia, <http://www.vsb.org/site/regulation/lawyer-discipline/>.

680. *Id.*

681. *Id.*

682. *Id.*

683. *Id.*

684. *Id.*

the attorney handling the complaint.⁶⁸⁵ After the investigation phase is complete, stage three, known as the District Committee Review begins.⁶⁸⁶ During this phase, the attorney handling the complaint reviews the investigator's report and makes a recommendation to a subcommittee composed of two lawyers and one non-lawyer.⁶⁸⁷ The subcommittee will then decide whether there is sufficient evidence to prove a violation has occurred or dismiss the complaint.⁶⁸⁸ At this point the subcommittee can impose a low level of discipline or the complaint will proceed to stage four.⁶⁸⁹

Stage four is an Evidentiary Hearing.⁶⁹⁰ The lawyer assigned to the case presents evidence to the district committee who then determines if an ethical rule has been violated.⁶⁹¹ The committee then imposes discipline or refers the case to the Disciplinary Board.⁶⁹² Only cases of serious misconduct are referred to the Disciplinary Board and only the board has the authority to suspend a bar license for up to five years or disbar the attorney.⁶⁹³ When an attorney is disciplined it remains on the lawyer's permanent record in one of four forms:⁶⁹⁴

- 1) Private Reprimand or Admonition
- 2) Public Reprimand
- 3) Suspension
- 4) Revoked License

The committee issues Private Reprimand or Admonition for less serious rule violations and Public Reprimand for more serious violations.⁶⁹⁵ A lawyer is only professionally responsible for offenses that indicate a lack of characteristics relevant to the practice of law.⁶⁹⁶ The severity of a sanc-

685. Virginia State Bar, An Agency of the Supreme Court of Virginia, <http://www.vsb.org/site/regulation/lawyer-discipline/>.

686. *Id.*

687. *Id.*

688. *Id.*

689. *Id.*

690. *Id.*

691. Virginia State Bar, An Agency of the Supreme Court of Virginia, <http://www.vsb.org/site/regulation/lawyer-discipline/>.

692. *Id.*

693. *Id.*

694. *Id.*

695. *Id.*

696. Virginia Rules of Professional Conduct, Comment 2, Rule 8.4.

tion depends on all circumstances although willfulness, seriousness, and whether there have been previous violations are relevant factors.⁶⁹⁷

The percentage of formal charges compared with active attorneys or complaints filed has not been reported. However, the percentage of disciplines imposed compared to complaints received has remained fairly constant, from 4% to 10%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	22135	22720	22270	23212	23746	24197	24528	25193	25710	26937	27562
Complaints Received	2960	3124	3346	3218	3917	3935	3737	4260	4409	4045	4277
Complaints Investigated	1971	2056	2148	2231	2358	2328	2118	2047	2030	1895	2128
Num. Formal Charges	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Percentage of Formal Charges Compared with Complaints	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total Number of Disciplines Imposed	248	244	240	254	361	318	296	276	460	171	224
Percentage of Disciplines Imposed Compared to Complaints Received	8%	8%	7%	8%	9%	8%	8%	6%	10%	4%	5%

WASHINGTON

The Washington State Bar Association Disciplinary Board has the authority to discipline attorneys based on the Rules for Lawyer Discipline.⁶⁹⁸ The Rules for Enforcement of Lawyer Conduct (ELC) governs the procedure by which a lawyer may be subjected to discipline.⁶⁹⁹

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional conduct the complainant must file a grievance with the Office of Disciplinary Counsel.⁷⁰⁰ No special language or form is necessary; however, the Counsel prefers that their grievance form is used and the complaint must be in writing and signed.⁷⁰¹ An online grievance may also be submitted through the Washington State

697. Virginia Rules of Professional Conduct, A Lawyer's Responsibilities.

698. Washington State Bar Association, Disciplinary Board, www.wsba.org/lawyers/groups/dboard/

699. Washington State Bar Association, Office of Disciplinary Counsel, <http://www.wsba.org/info/operations/odc/default.htm>.

700. Washington State Bar Association, Lawyer Discipline in Washington, <http://www.wsba.org/info/operations/odc/grievance.htm>.

701. *Id.*

Bar Association website.⁷⁰² There is no fee or time limit on filing a grievance.⁷⁰³

The Washington Rules of Professional Conduct defines misconduct as:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed,

702. *Id.*

703. *Id.*

religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments;

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) violate his or her oath as an attorney;

(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(m) violate the Code of Judicial Conduct; or

(n) engage in conduct demonstrating unfitness to practice law.⁷⁰⁴

Once a grievance is filed, the intake unit conducts an initial screening and either dismisses the grievance or recommends further investigation.⁷⁰⁵ If further investigation is needed, the Disciplinary Counsel conducts a confidential investigation and will either dismiss the grievance or refer it to a Review Committee of the Disciplinary Board.⁷⁰⁶ The Disciplinary Board is a fourteen member board with ten lawyers and four non-lawyers.⁷⁰⁷ If a grievance is sent to the Review Committee, they decide whether to dismiss the matter, order further investigation, or order a pub-

704. WASHINGTON RULES OF PROFESSIONAL CONDUCT R. 8.4, available at, http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garp8.4.

705. Washington State Bar Association, Office of Disciplinary Counsel, <http://www.wsba.org/info/operations/odc/default.htm>.

706. *Id.*

707. Washington State Bar Association, Disciplinary Board, www.wsba.org/lawyers/groups/dboard/

lic hearing.⁷⁰⁸ If a hearing is ordered, it is held before volunteer Hearing Officers with the Disciplinary Counsel acting as prosecutor.⁷⁰⁹ If at the hearing misconduct is found, Rule 13.1 of the Rules for Enforcement of Lawyer Conduct lists the possible sanctions and remedies the lawyer may receive:

(a) Sanctions.

(1) Disbarment;

(2) Suspension under rule 13.3; or

(3) Reprimand.

(b) Admonition under rule 13.5.

(c) Remedies.

(1) Restitution;

(2) Probation;

(3) Limitation on practice;

(4) Requirement that the lawyer attend continuing legal education courses;

(5) Assessment of costs; or

(6) Other requirements consistent with the purposes of lawyer discipline.⁷¹⁰

Anytime a suspension or disbarment is issued the Disciplinary Board reviews the decision from the public hearing.⁷¹¹ Also, if a lawyer appeals the decision from the hearing the Disciplinary Board again reviews the grievance.⁷¹² The Disciplinary Counsel can also ask the Supreme Court to

708. Washington State Bar Association, Office of Disciplinary Counsel, <http://www.wsba.org/info/operations/odc/default.htm>.

709. *Id.*

710. RULES FOR ENFORCEMENT OF LAWYER CONDUCT R. 13.1, available at, http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ELC&ruleid=gaclc1313.01.

711. 2009 Annual Report, <http://www.wsba.org/public/complaints/2009annualreportfinal.pdf>.

712. *Id.*

temporarily suspend a license pending the resolution of a grievance usually where they feel the lawyer is a serious threat to the public.⁷¹³ Additionally, for offenses the Counsel finds to be minor they may impose a rehabilitative program or send the attorney an advisory letter to warn them of their conduct.⁷¹⁴ The Supreme Court has final appellate review over all grievances and oversees the entire Disciplinary system.⁷¹⁵

The ELC Rule 6.2 defines less serious misconduct as: "Less serious misconduct is conduct not warranting a sanction restricting the respondent lawyer's license to practice law." Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

- (A) the misconduct involves the misappropriation of funds;
- (B) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;
- (C) the respondent has been sanctioned in the last three years;
- (D) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;
- (E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
- (F) the misconduct constitutes a "serious crime" as defined in rule 7.1(a); or
- (G) the misconduct is part of a pattern of similar misconduct.⁷¹⁶

The percentage of formal charges as compared with the active attorney population has remained at less than or at 1%. The percentage of formal charges compared with complaints filed has remained consistently low. In addition, the percentage of disciplines imposed compared to complaints received also remained consistently low, ranging from 4% to 9%.

713. Washington State Bar Association, Office of Disciplinary Counsel, <http://www.wsba.org/info/operations/odc/default.htm>.

714. *Id.*

715. 2009 Annual Report, <http://www.wsba.org/public/complaints/2009annualreportfinal.pdf>

716. RULES FOR ENFORCEMENT OF LAWYER CONDUCT R. 6.2, available at, http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ELC&ruleid=gaelc0606.02.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	17951	18278	18710	19217	23523	24380	24422	25160	25761	26730	27322
Complaints Received	2723	2594	3427	2717	2399	2718	2735	2540	2534	2589	2324
Complaints Investigated	1327	1212	2494	2878	2593	2721	1284	1068	1916	2196	2219
Num. Formal Charges	56	47	104	84	104	91	77	93	77	83	76
Percentage of Formal Charges Compared with Complaints	2%	2%	3%	3%	4%	3%	3%	4%	3%	3%	3%
Total Number of Disciplines Imposed	116	100	166	120	210	195	160	168	152	152	172
Percentage of Disciplines Imposed Compared to Complaints Received	4%	4%	5%	4%	9%	7%	6%	7%	8%	7%	8%

WEST VIRGINIA

The Lawyer Disciplinary Board, with the assistance of the Office of Disciplinary Counsel, has the authority to discipline attorneys for ethical violations of the West Virginia Rules of Professional Conduct.⁷¹⁷

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional conduct, the complainant must file a complaint with the Office of Disciplinary Counsel by submitting an affidavit setting forth the facts of the alleged complaint.⁷¹⁸ There is no special form or language necessary to file a complaint however; the complaint must be sworn before a notary.⁷¹⁹ The West Virginia State Bar website provides a form online but does not require it to be used.⁷²⁰ All complaints must be brought within two years unless the alleged misconduct was recently discovered.⁷²¹

The West Virginia Rules of Professional Conduct lists the conduct that would warrant discipline:

- (a) violate or attempt to violate the Rules of Professional Conduct,

717. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

718. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board, How to File a Complaint, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

719. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

720. *Id.*

721. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board, Time Limit of Filing Complaints, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) have sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship. For purposes of this rule, "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a client or causing such client to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party or as a means of abuse.

Once a complaint is sent to the Disciplinary Board, it is sent to the Office of Disciplinary Counsel to determine if there is a violation of the Rules of Professional Conduct.⁷²² The Disciplinary Board consists of two-thirds lawyers and one-third non-lawyers.⁷²³

If the complaint does not demonstrate a violation it will not be investigated.⁷²⁴ If the Office of Disciplinary Counsel believes there is a violation, then the investigation process begins.⁷²⁵ During this process the lawyer

722. W. Va. State Bar, Information about the W. Virginia Lawyer Disciplinary Board, Review of Complaints, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

723. W. Va. State Bar, Information about the W. Virginia Lawyer Disciplinary Board, Lawyer Disciplinary Board, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

724. W. Va. State Bar, Information about the W. Va. Lawyer Disciplinary Board, Review of Complaints, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

725. W. Va. State Bar, Information about the W. Va. Lawyer Disciplinary Board, Investigation of Complaints, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

will be asked to respond and the Counsel will determine if any additional information or witnesses are needed to determine the misconduct.⁷²⁶ Once the investigation is complete, the Chief Lawyer Disciplinary Counsel may dismiss the complaint or send the complaint to the Investigative Panel.⁷²⁷ The Investigative Panel then reviews the matter and either dismisses the complaint, finds a violation and determines no further action is necessary, issues a written admonishment to the attorney, requires additional investigation, refers to mediation, or issues formal charges against the lawyer and directs a formal hearing to be held.⁷²⁸ If formal charges and a hearing are issued a hearing panel subcommittee consisting of three lawyer members of the board and one non-lawyer preside over a public hearing.⁷²⁹ The subcommittee then determines whether the attorney should be disciplined or the complaint should be dismissed.⁷³⁰

The decision is then submitted to the Supreme Court of Appeals of West Virginia who determines what form of discipline to impose on the attorney.⁷³¹ The discipline form is determined by the severity of the offense and can take any one of the following forms: probation, restitution, limitation on the nature or extent of practice, admonishment, supervised practice, community service, public reprimand, suspension for a specified time, disability suspension, or disbarment.⁷³²

The Rules of Lawyer Disciplinary Procedure Rule 3.16 outlines the factors to be considered in imposing sanctions:

(1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) whether the lawyer acted intentionally, knowingly, or negligently;

(3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors.⁷³³

726. *Id.*

727. W. Va. State Bar, Information about the W. Va. Lawyer Disciplinary Board, Investigation of Complaints, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

728. W. Va. State Bar, Information about the W. Va. Lawyer Disciplinary Board, Investigative Panel Action, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

729. W. Va. State Bar, Information about the W. Va. Lawyer Disciplinary Board, Public Hearing, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

730. *Id.*

731. W. Va. State Bar, Information about the W. Va. Lawyer Disciplinary Board, Action by the Supreme Court of Appeals of West Virginia, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

732. W. Va. State Bar, Information about the W. Va. Lawyer Disciplinary Board, Discipline of Lawyers, <http://www.wvdc.org/pdf/LDB%20Info.pdf>.

733. W. Va. Rules of Lawyer Disciplinary Procedure, R. 3.16.

The Supreme Court has also stated that "[i]n deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession."⁷³⁴

The percentage of formal charges, as compared with the active attorney population has remained, at less than 1%. The percentage of formal charges compared with complaints filed has remained consistently low when reported. Additionally, the percentage of disciplines imposed compared to complaints received has remained consistently low.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	n/a	n/a	5142	5294	5428	5480	5583	n/a	4500	6169	6325
Complaints Received	n/a	n/a	571	573	609	619	663	n/a	653	577	618
Complaints Investigated	n/a	n/a	1069	1069	1107	1080	801	n/a	1074	989	991
Num. Formal Charges	n/a	n/a	10	9	15	10	8	n/a	13	15	21
Percentage of Formal Charges Compared with Complaints	n/a	n/a	2%	2%	2%	2%	1%	n/a	2%	3%	3%
Total Number of Disciplines Imposed	n/a	n/a	23	32	35	56	27	n/a	16	36	36
Percentage of Disciplines Imposed Compared to Complaints Received	n/a	n/a	4%	6%	6%	9%	4%	n/a	2%	6%	6%

WISCONSIN

The Office of Lawyer Regulation, under the supervision of the Wisconsin Supreme Court, has the authority to discipline attorneys for violations of the Wisconsin Rules of Professional Conduct.⁷³⁵ The Office of Lawyer Regulation has the responsibility to investigate claims against attorneys and must find clear and convincing evidence against an attorney to sanction the attorney.⁷³⁶ The purpose of the Office of Lawyer Regulation is to supervise the practice of law and protect the public from misconduct.⁷³⁷

A complainant may file a complaint with the Office of Lawyer Regulation by mailing a written letter, using their online grievance form, or directly calling the Office of Lawyer Regulation.⁷³⁸ The Wisconsin Rules of Professional Conduct lists the conduct that would warrant discipline:

734. Committee on Legal Ethics v. Walker, 178 W. Va. 150, 358 S.E. 2d 234 (1987).

735. Wisconsin Bar Organization, Lawyer Regulation & Discipline, http://www.wisbar.org/AM/Template.cfm?Section=Lawyer_Regulation_and_Discipline.

736. *Id.*

737. Wisconsin Court System, Lawyer Regulation Process, <http://www.wicourts.gov/services/public/lawyerreg/process.html>.

738. Wisconsin Court System, Instructions For Filing a Grievance, <http://www.wicourts.gov/>

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;

(g) violate the attorney's oath;

(h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1); or

(i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i).⁷³⁹

Once a complaint is sent to the Office of Lawyer Regulation the office conducts a preliminary investigation.⁷⁴⁰ The Office can either 1) forward the matter to another agency, 2) reconcile a minor dispute, 3) close the matter because it does not present sufficient information to support a potential ethical violation, or 4) refer it for formal investigation or diversion to an alternative to discipline program.⁷⁴¹ If during the preliminary investigation the Office decides there is sufficient evidence to warrant a viola-

services/public/lawyerreg/file.html.

739. WIS. R. OF PROF'L CONDUCT 8.4.

740. Instructions For Filing a Grievance, <http://www.wicourts.gov/services/public/lawyerreg/file.html>.

741. *Id.*

tion, the attorney is sent a letter requesting their response to the allegations.⁷⁴² Once the response from the attorney is received the Office then determines whether (a) an uncontested violation exists, (b) the grievance should be dismissed for lack of evidence, (c) further staff investigation is needed, or (d) the matter should be assigned for further investigation by a district investigative committee.⁷⁴³

There are sixteen district investigative committees composed of lawyers and non-lawyers who conduct further investigation regarding the complaint and prepare a full written report summarizing the facts and potential violations.⁷⁴⁴ After the investigation and report are complete the director of the committee determines either 1) to dismiss the matter due to a lack of sufficient evidence, 2) to divert the matter to an alternative to discipline program, 3) to seek the respondent attorney's consent to a private or public reprimand, or 4) to present the matter to the Preliminary Review Committee for a determination of cause to proceed.⁷⁴⁵

The Preliminary Review Committee is a fourteen-person committee composed of nine lawyers and five non-lawyers.⁷⁴⁶ The Preliminary Review Committee determines whether the Director should file a complaint against an attorney with the Supreme Court.⁷⁴⁷ If a complaint is filed with the Supreme Court, the Court then appoints a referee to the case who holds a scheduling conference to define the issues and determine the extent of discovery.⁷⁴⁸ The referee then presides over a public hearing and within thirty days after the hearing submits a report to the Supreme Court recommending dismissal of the complaint or discipline.⁷⁴⁹ Pursuant to the Lawyer Regulation System Rules the following forms of discipline can occur:⁷⁵⁰

(1m) Any of the following may be imposed on an attorney as discipline for misconduct pursuant to the procedure set forth in SCR chapter 22:

(a) Revocation of license to practice law.

742. *Id.*

743. *Id.*

744. Wisconsin Court System, Lawyer Regulation Process, <http://www.wicourts.gov/services/public/lawyerreg/process.html>.

745. *Id.*

746. Wisconsin Court system, Lawyer Regulation System, <http://www.wicourts.gov/services/public/lawyerreg/system.html>.

747. *Id.*

748. Wisconsin Court System, Lawyer Regulation System, <http://www.wicourts.gov/services/public/lawyerreg/system.html>.

749. *Id.*

750. Wisconsin Lawyer Regulation System, Sup. Ct. R. 21.16, <http://wicourts.gov/sc/scrule/DisplayDocument.html?content=html&seqNo=29581>.

(b) Suspension of license to practice law.

(c) Public or private reprimand.

(d) Conditions on the continued practice of law.

(e) Monetary payment.

(m) Restitution, as provided under sub. (2m).

(f) Conditions on seeking license reinstatement.

(2m) (a) An attorney may be ordered to do any of the following as restitution under sub. (1m)(em):

1. Pay monetary restitution to the person whose money or property was misappropriated or misapplied in the amount or value of such money or property as found in the disciplinary proceedings.

2. Reimburse the Wisconsin lawyers' fund for client protection for awards made to the person whose money or property was misappropriated or misapplied.

(b) Any payment made as restitution under par. (a) does not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of the payment.

(c) Upon ordering restitution to the Wisconsin lawyers' fund for client protection under par. (a)2., the supreme court shall issue a judgment and furnish a transcript of the judgment to the Fund. The transcript of the judgment may be filed and docketed in the office of the clerk of court in any county and shall have the same force and effect as judgments docketed under ss. 809.25 and 806.16, stats.

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has remained consistently low, under 3%. In addition, the percentage of disciplines imposed compared to complaints received has remained consistent, from 4% to 8%.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	19581	19984	20167	20551	20722	21112	21518	18023	22225	18767	23013
Complaints Received	1396	1423	1526	1951	2423	2261	2225	2105	2061	1896	2066
Complaints Investigated	1326	1299	2154	2825	3550	1816	3262	2843	1394	1149	2685
Num. Formal Charges	20	13	20	n/a	28	46	52	39	60	37	39
Percentage of Formal Charges Compared with Complaints	1%	1%	1%	n/a	1%	2%	2%	2%	3%	2%	2%
Total Number of Disciplines Imposed ⁷⁵¹	102	86	86	84	162	125	168	114	151	140	138
Percentage of Disciplines Imposed Compared to Complaints Received	7%	6%	6%	4%	7%	6%	8%	5%	7%	7%	7%

WYOMING

The Wyoming Supreme Court appoints a Board of Professional Responsibility, consisting of seven members, five of whom are members of the Wyoming State Bar and two are non-attorneys.⁷⁵² The BPR has the power to determine the appropriate private discipline to be imposed or to recommend an appropriate public discipline to the Court.⁷⁵³

When a complaint is received, it is reviewed by Bar Counsel to determine if a violation of the Rules of Professional Conduct is stated.⁷⁵⁴ The complainant will receive a letter from Bar Counsel informing them that (1) the complaint does not appear to involve conduct that is within the disciplinary jurisdiction of the Bar; (2) more information is needed; or (3) an investigation has been initiated.⁷⁵⁵ If an investigation is initiated, the attorney will receive a copy of the complaint letter and the attorney is required to respond in writing to the allegations.⁷⁵⁶ Normally, the complainant will receive a copy of the attorney's response and will be requested to reply to it.⁷⁵⁷ If the lawyer is found to have violated an ethical rule, the Board of Professional Responsibility will discipline the attorney or recommend discipline to the Wyoming Supreme Court.⁷⁵⁸

751. This number may not include all lawyers publicly disciplined.

752. BPR, http://www.courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=DisciplinaryCode.xml (follow hyperlink to Rule 8.4, Misconduct).

753. *Id.*

754. What Happens, <http://www.wyomingbar.org/complaints/lawyers.html>.

755. *Id.*

756. *Id.*

757. *Id.*

758. *Id.*

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(g) knowingly employ or continue to employ or contract with any person in the practice of law who has been disbarred or is under suspension from the practice of law by any jurisdiction, or is on disability inactive status by any jurisdiction. The prohibition of this rule extends to the employment of or contracting for the services of such disbarred or suspended person in any position or capacity (including but not limited to as an employee, independent contractor, paralegal, secretary, investigator or consultant) which is directly or indirectly related to the practice of law as defined by Rule 11(a) of the Rules of the Supreme Court of Wyoming Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming, whether or not compensation is paid.⁷⁵⁹

If a lawyer is found to have violated an ethical rule, one of the following levels of discipline may be imposed:

759. Rule 8.4, http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=AttorneysConduct.xml (last visited Jan. 27, 2011).

- The lawyer could receive a private reprimand, which means the lawyer is told he or she has broken a rule, and a notation is made on the lawyer's record; or
- The lawyer could receive a public censure which means that the violation of a rule by the lawyer is made public; or
- The lawyer's license to practice law could be suspended for up to five years, during which time the lawyer cannot practice law; or
- The lawyer's license could be revoked, which means the lawyer is disbarred from the practice of law. After five years, the lawyer could seek reinstatement.⁷⁶⁰

The percentage of formal charges, as compared with the active attorney population, has ranged from less than 1% to 2%. The percentage of formal charges compared with complaints filed has varied dramatically, from an earlier reported and recently reported 2% up to 22%. Similarly, the percentage of disciplines imposed compared to complaints received has varied, from 3% up to 36%.

II. LESSONS LEARNED AND CONCLUSIONS

While each state may have its own rules governing professional behavior of attorneys, it is clear that the discipline systems of the various states

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Active Lawyers	1746	1807	1800	2126	1901	1953	1990	2060	2453	1864	2205
Complaints Received	321	317	313	42	193	150	150	218	140	172	146
Complaints Investigated	116	118	112	n/a	n/a	79	121	135	150	55	158
Num. Formal Charges	7	10	8	n/a	n/a	0	33	35	11	4	4
Percentage of Formal Charges Compared with Complaints	2%	3%	2%	n/a	n/a	0%	22%	16%	8%	2%	3%
Total Number of Disciplines Imposed ⁷⁶¹	20	24	14	15	32	32	34	12	43	22	5
Percentage of Disciplines Imposed Compared to Complaints Recd	6%	8%	4%	36%	17%	21%	23%	6%	31%	13%	3%

are all seeking consistent, ethical actions by its professionals. In addition, procedurally, all states have some type of system that provides a process by which both attorney or client can be heard fairly, although the individ-

760. Discipline, <http://www.wyomingbar.org/complaints/lawyers.html>.

761. Some of these numbers are estimated.

ual workings of each system vary widely. The discipline system of attorneys, with its procedural and substantive variations, has had its share of criticisms, which are discussed below.

A. The Self-Discipline Problem

States' disciplinary systems have been criticized by some as leaving a huge hole in the process regarding the self-regulating and self-policing provisions of the duty to report.⁷⁶² HALT (Help Abolish Legal Tyranny) is the nation's largest legal reform organization.⁷⁶³ One of its tasks is to rate the attorney discipline system.⁷⁶⁴ The following is its most recent rankings of states attorney discipline:⁷⁶⁵

State	HALT Overall Attorney Discipline Grade 2006 ⁷⁶⁶
Alabama	D+
Alaska	D+
Arizona	B-
Arkansas	D+
California	D+
Colorado	B-
Connecticut	B-
Delaware	D+
Florida	C+
Georgia	C+
Hawaii	D+
Idaho	D+
Illinois	C
Indiana	C-
Iowa	D+
Kansas	C-
Kentucky	C+
Louisiana	C-
Maine	C+
Maryland	C-
Massachusetts	C

762. Brown, at 1596.

763. http://www.halt.org/about_halt/ (last visited November 16, 2010).

764. http://www.halt.org/reform_projects/lawyer_accountability/report_card_2006/ (last visited November 16, 2010).

765. *Id.* (follow National Comparison by Rank hyperlink).

766. Categories evaluated include: Adequacy of Discipline Imposed, Publicity and Responsiveness, Openness of the Process, Fairness of the Disciplinary Procedures, Public Participation and Promptness.

Michigan	C
Minnesota	C-
Mississippi	C+
Missouri	C-
Montana	D+
Nebraska	C-
Nevada	C-
New Hampshire	C
New Jersey	C+
New Mexico	C+
New York	D+
North Carolina	D
North Dakota	C
Ohio	D+
Oklahoma	D+
Oregon	C
Pennsylvania	C+
Rhode Island	C
South Carolina	D+
South Dakota	C-
Tennessee	C+
Texas	D+
Utah	F
Vermont	C+
Virginia	C-
Washington	C
West Virginia	C
Wisconsin	C
Wyoming	C

HALT published reports in both 2006 and 2002.⁷⁶⁷ However, many systems have made changes more recently than this last report. The 1992 report of the Commission on Evaluation of Disciplinary Enforcement documents the history and reasons supporting a fully open disciplinary system, the success of which were evidenced by experience in states which had them.⁷⁶⁸ As evidenced by statistics available in some states in more recent years than in past, states are working on aspects of openness. For example, HALT cited Pennsylvania's disciplinary body, which HALT rated as worst in the nation four years ago, as now fifth in 2006, and as a

767. http://www.halt.org/reform_projects/lawyer_accountability/report_card_2006/ (last visited November 16, 2010).

768. ABA Center for Professional Responsibility, Lawyer Regulation for a New Century Report of the Commission on Evaluation of Disciplinary Enforcement February 1992, 20, available at www.abanet.org/abanet/ (last visited November 11, 2006).

model for reform in the nation.⁷⁶⁹ Unfortunately, other states, such as Massachusetts and California, reformed in the opposite direction.⁷⁷⁰

B. The Training Problem

State by state regulation has its critics. One point made has been that the widespread use of the MPRE exam testing professional responsibility nationwide as part of licensure undercuts the idea of individual state ethics regulation.⁷⁷¹ Legal education may also play a part in this perception, teaching multijurisdictional curricula in a wide variety of courses, rather than focusing on state rules.⁷⁷²

Unlike a move for a uniform bar exam by many jurisdictions, there appears to be no such force attempting to unify discipline systems of states, despite the uniform professional responsibility exam.⁷⁷³

C. The Law Firm Problem/Multijurisdictional Practice of Law

Due to extensive changes in both the legal profession and the world at large, there has been a growth in multijurisdictional practice by lawyers in the United States.⁷⁷⁴ There has been no one suggested solution to the problems this causes in the discipline system with attorneys being licensed in individual jurisdictions, although suggestions have ranged from having a "registration" card for attorneys in other jurisdictions, to allowing temporary MJP, to allowing a lawyer practicing in one state access to practice in any state, to eliminating licensing from the legal market.⁷⁷⁵ These widespread solutions would either need to then be thought through regarding attorney discipline, or at its most radical, eliminate the regulation of attorneys in ways that currently operate.

The practice of law continues to increase in representation in multiple jurisdictions.⁷⁷⁶ Attorneys are not only faced with complex ethical rules but the question of which rules apply in situations where offices exist in

769. http://www.halt.org/reform_projects/lawyer_accountability/report_card_2006/ (last visited November 16, 2010) (follow state of Pennsylvania hyperlink).

770. *Id.* (follow states of Massachusetts and California hyperlinks).

771. Mary C. Daly, *Resolving Ethical Conflicts in Multijurisdictional Practice-is Model Rule 8.5 the Answer, An answer or No Answer at All?* 36 S. TEX. L. REV. 715, 733 (1995).

772. *Id.* at 732.

773. Leigh Jones, *Uniform Bar Exam Drawing Closer to Reality*, www.law.com/jsp/law/LawArticleFriendly.jsp?id=120243447271 (October 12, 2009). The reality of a uniform bar exam is so near that SALT (Society for American Law Teaching) has recently issued a position paper outlining some strengths and weaknesses of such a plan (see SALT Public Advocacy Letter, January 20, 2010).

774. Gary A. Munneke, *Multijurisdictional Practice of Law: Recent Developments in the National Debate*, 27 J. LEGAL PROF. 91, 99 (2002/2003).

775. *Id.* at 101.

776. Teresa Stanton Collett, *Foreword Symposium Ethic and the Multijurisdictional Practice of Law*, 36 S. TEX. L. REV. 657 (1995).

multiple jurisdictions.⁷⁷⁷ Multi-jurisdictional practice impacts many lawyers in a wide variety of tasks.⁷⁷⁸ Because disciplinary systems are tied to licensure, there is a question as to whether attorneys are properly researching and considering ethics rules in all jurisdictions in which a case may implicate.⁷⁷⁹

Many believe that the regulation of lawyers by states has not kept up with the new complexity of law practice, particularly as applied to lawyers working in a branch office of a multi-jurisdictional law firm.⁷⁸⁰ The end result is that one law firm is potentially subject to different regulation in each state where it has branches.⁷⁸¹ The main criticism of this situation is its inefficiency.⁷⁸² Some authors have contended that the solution would be to allow firms to choose the rules under which it operates when it has branches in multiple jurisdictions.⁷⁸³ Others have suggested that the entire system be reformed to eliminate all restrictions to interstate practice by a licensed attorney in any state, with disciplinary authority over all these lawyers, and those decisions being given full credit nationwide.⁷⁸⁴

D. The Parallel System Problem

In addition, movements toward a uniform set of rules of ethics to apply to lawyers only when practicing in federal court systems have been criticized as unnecessarily complicating attorney regulation.⁷⁸⁵ While the court systems may vary from state to state, from the local courtroom to the federal courtroom, it seems unnecessarily complicated to impose different sets of rules of conduct and procedures for discipline depending on which court an attorney is practicing.

E. Conclusions

It is clear that attorney discipline systems, while not perfect, are not going to undergo a national comprehensive overhaul. States have clearly begun to realize that it is important that consumers of legal services know

777. *Id.*

778. Joseph R. Lundy and Robert A. Creamer, *Private Practitioner Problems with Multijurisdictional Law Practice in Transactional and Litigation Matters*, 11 ABA PROF. LAW 10 (2000).

779. Collet, *supra* note 776, at 661.

780. Larry E. Ribstein, *Ethical Rules, Law Firm Structure and Choice of Law*, 69 U. CIN. L. REV. 1161 (2001).

781. *Id.*

782. *Id.*

783. *Id.* at 1165.

784. Gerard J. Clark, *The Two Faces of Multi-Jurisdictional Practice*, 29 N. KY L. REV. 251, 274 (2002).

785. *The Proposed Federal Rules of Attorney Conduct: The Wrong Solution for the Wrong Problem*, 54 THE RECORD 219 (March/April 1999), available at <http://www.abcny.org/Publications/record/mar-apr99pp.1.pdf>.

more about the attorneys whom they are hiring, and seem to be in a transitory time of discovering how to bring the best information to these clients, using available resources, while still meeting the needs of the lawyers in the system. Balancing resources, attorneys, and client needs is not an easy task.

In addition, the problems of multijurisdictional licensed attorneys, attorneys in firms, legal education and testing, and self regulation also are not going to undergo radical change. Therefore, state bars should be actively working on streamlining their discipline systems; ensuring that records of discipline for its attorneys are made as easily available for consumers of legal services as possible; to make the complaint process fair, accessible and prompt for both clients and attorneys; and developing ways to share that information with other state bars who may have a stake in that information. Information from outside organizations evaluating the success of each system is available, and State Bars must stay on the task to ensure that their system is as efficient and useful as possible, both for attorneys and consumers.